

# **IDAHO CODE**

## **TITLES 50 to 53**

### **MUNICIPAL CORPORATIONS to PARTNERSHIP**

**Current through 2020 Regular Session**

**MICHIE**

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**IDAHO CODE**  
CONTAINING THE  
**GENERAL LAWS OF IDAHO**  
**ANNOTATED**

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**COMMISSIONERS**

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**TITLES 50–53**

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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.”

**Section 67-510 Idaho Code** provides: “No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.”

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E.S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E.S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E.S.) .....	March 20, 1935
1935 (2nd E.S.) .....	July 10, 1935
1935 (3rd E.S.) .....	July 31, 1936

1937 .....	March 6, 1937
1937 (E.S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E.S.) .....	March 1, 1944
1944 (2nd E.S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E.S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E.S.) .....	February 25, 1950
1951 .....	March 12, 1951
1952 (E.S.) .....	January 16, 1952
1953 .....	March 6, 1953
1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971

1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
1981 (E.S.) .....	July 21, 1981
1982 .....	March 24, 1982
1983 .....	April 14, 1983
1983 (E.S.) .....	May 11, 1983
1984 .....	March 31, 1984
1985 .....	March 13, 1985
1986 .....	March 28, 1986
1987 .....	April 1, 1987
1988 .....	March 31, 1988
1989 .....	March 29, 1989
1990 .....	March 30, 1990
1991 .....	March 30, 1991
1992 .....	April 3, 1992
1992 (E.S.) .....	July 28, 1992
1993 .....	March 27, 1993
1994 .....	April 1, 1994
1995 .....	March 17, 1995
1996 .....	March 15, 1996
1997 .....	March 19, 1997
1998 .....	March 23, 1998
1999 .....	March 19, 1999

2000 .....	April 5, 2000
2001 .....	March 30, 2001
2002 .....	March 15, 2002
2003 .....	May 3, 2003
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S) .....	August 25, 2006
2007 .....	March 30, 2007
2008 .....	April 2, 2008
2009 .....	May 8, 2009
2010 .....	March 29, 2010
2011 .....	April 7, 2011
2012 .....	March 29, 2012
2013 .....	April 4, 2013
2014 .....	March 20, 2014
2015 .....	April 11, 2015
2015 (E.S.) .....	May 18, 2015
2016 .....	March 25, 2016
2017 .....	March 29, 2017
2018 .....	March 28, 2018
2019 .....	April 11, 2019
2020 .....	March 20, 2020





**Title 50**  
**MUNICIPAL CORPORATIONS**

Chapter

Chapter 1. Manner of Original Incorporation — Organization, §§ 50-101 — 50-104.

Chapter 2. General Provisions — Government — Territory, §§ 50-201 — 50-237.

Chapter 3. Powers, §§ 50-301 — 50-345.

Chapter 4. Municipal Elections, §§ 50-401 — 50-479.

Chapter 5. Initiative — Referendum — Recall. [Repealed.]

Chapter 6. Mayor, §§ 50-601 — 50-612.

Chapter 7. Council, §§ 50-701 — 50-708.

Chapter 8. Council-Manager Plan, §§ 50-801 — 50-813.

Chapter 9. Ordinances — City Code — Records, §§ 50-901 — 50-910.

Chapter 10. Finances, §§ 50-1001 — 50-1049.

Chapter 11. Planning Commissions. [Repealed.]

Chapter 12. Zoning. [Repealed.]

Chapter 13. Plats and Vacations, §§ 50-1301 — 50-1334.

Chapter 14. Conveyance of Property, §§ 50-1401 — 50-1409.

Chapter 15. Policeman's Retirement Fund, §§ 50-1501 — 50-1526.

Chapter 16. Civil Service, §§ 50-1601 — 50-1610.

Chapter 17. Local Improvement District Code — Guarantee Fund, §§ 50-1701 — 50-1772.

Chapter 18. City Irrigation Systems, §§ 50-1801 — 50-1835.

Chapter 19. Housing Authorities and Cooperation Law, §§ 50-1901 — 50-1927.

Chapter 20. Urban Renewal Law, §§ 50-2001 — 50-2033.

Chapter 21. Consolidation of Cities, §§ 50-2101 — 50-2114.

Chapter 22. Disincorporation Procedure, §§ 50-2201 — 50-2214.

Chapter 23. Reorganization of Cities Under General Laws, §§ 50-2301 — 50-2308.

Chapter 24. Police Courts. [Repealed.]

Chapter 25. Underground Conversion of Utilities, §§ 50-2501 — 50-2523.

Chapter 26. Business Improvement Districts, §§ 50-2601 — 50-2624.

Chapter 27. Municipal Industrial Development Program, §§ 50-2701 — 50-2723.

Chapter 28. Idaho Private Activity Bond Ceiling Allocation Act, §§ 50-2801 — 50-2805.

Chapter 29. Local Economic Development Act, §§ 50-2901 — 50-2913.

Chapter 30. Idaho Video Service Act, §§ 50-3001 — 50-3011.

Chapter 31. Community Infrastructure District Act, §§ 50-3101 — 50-3121.



Chapter 1  
MANNER OF ORIGINAL INCORPORATION —  
ORGANIZATION

Sec.

50-101. Incorporation.

50-102. Manner of incorporating.

50-103. Census.

50-104. Proof of corporate existence.

**§ 50-101. Incorporation.** — The residents of any unincorporated contiguous area (village) containing not less than 125 qualified electors may present a petition signed by a majority of the said electors to the board of commissioners of the county in which said petitioners reside, praying that they be incorporated as a city, designating the name they wish to assume and the metes and bounds of the proposed city.

Upon the petition to incorporate filed as herein provided, the board of county commissioners petitioned shall have no jurisdiction to take any action thereon or enter an order of incorporation, regardless of the number of petitioners thereon, where the boundaries of the proposed new city approach any point within one (1) mile of the boundary limits of any existing city of less than five thousand (5,000) population, within two (2) miles of the boundary limits of any existing city of five thousand (5,000) but less than ten thousand (10,000) population, within three (3) miles of the boundary limits of any existing city of ten thousand (10,000) but less than twenty thousand (20,000) population, or within four (4) miles of the boundary limits of any existing city of twenty thousand (20,000) or more population, all populations as determined by the last official or special United States census, unless there is first furnished said board of county commissioners either (a) a certified copy of a resolution of the city council of any existing city within the above applicable distances of the proposed city approving said petition for incorporation, or (b) appropriate evidence that the city council of any existing city within the above applicable distances of the proposed city, if contiguous or adjacent, has rejected and refused to annex the area of the proposed city to the existing city upon the petition made as hereinafter set out. Where the proposed new city area lies within the applicable distance of one or more cities, all cities must approve the petition of incorporation. An existing city shall be deemed to have rejected and refused to annex the contiguous or adjacent area when a petition for annexation is filed prior to 90 days before the end of any fiscal year, and the city council, within 60 days after receipt of said petition has not by appropriate action, declared that such area will be a part of such existing city, effective not later than the last day of the fiscal year in which said petition was filed. Such petition shall be signed by a majority of the

inhabitants paying real estate taxes within said area requesting annexation, contain a certain metes and bounds description of the area set out in the petition and certify that the area so described falls within the distance limits herein set forth. The existing city, the petitioners, as herein provided, or the board of county commissioners is granted the power to petition the district court for a declaration of the right on any disputes arising between any of the parties so named hereunder.

**History.**

1967, ch. 429, § 1, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Annexation of adjacent territory, § 50-222.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Section 474 of S.L. 1967, ch. 429 read: "If any section, subsection, subdivision, paragraph, sentence, part or provision of this act shall be found to be invalid or ineffective by any court it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, subsection, subdivision, paragraph, sentence, part or provision and this act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid."

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

## **Requisite Filings.**

When Acequia was incorporated as a village in 1952, the procedure was governed by former § 50-701. The statutes then in effect for “villages” contained no requirement of filing a proclamation declaring incorporation of a city with the secretary of state. So, since this section and § 50-102 were not enacted until 1967, even though Acequia has not filed with the secretary of state a proclamation declaring incorporation of a city, Acequia was a duly formed city when the ordinances in question were enacted. *State v. Phillips*, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990).

## Decisions Under Prior Law

Appeals.

Collateral attack.

Construction.

Existence as unit.

Notice.

Order.

Petition.

**Appeals.**

Where board of commissioners in making an order incorporating a city found that proposed boundaries were reasonable, any person who was aggrieved thereby had his remedy by appeal, and incorporation would not be held void because boundaries were improperly fixed, in absence of any showing that boundaries so fixed included an unreasonable amount of land. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

Order for incorporation of a village was appealable to district court by any person aggrieved thereby or by any taxpayer within territory affected by such incorporation. *Gardner v. Blaine County*, 15 Idaho 698, 99 P. 826 (1909).

An appeal filed by city from order incorporating a village to which incorporation the city objected on the grounds that the proposed village contained fewer than 125 residents, that the proposed boundaries were

irregular, bizarre and fantastic, that its incorporation would materially hamper the ordinary growth of the city would have been dismissed on the ground that the city was neither a “person aggrieved” by the order, nor a “taxpayer of the county” and therefore was not authorized to appeal under the provisions of former § 31-1509. *In re Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958).

### **Collateral Attack.**

In action attacking validity of incorporation of a village on ground that petition praying for such incorporation was not signed by majority of taxable male inhabitants residing within boundaries of said village, it must affirmatively have appeared from proceedings attacking such incorporation that said petition was not signed by majority of such taxpayers. *In re Francis*, 7 Idaho 98, 60 P. 561 (1900).

### **Construction.**

Provisions of former section authorizing incorporation of a village was to be liberally construed. *Village of Ilo v. Ramey*, 18 Idaho 642, 112 P. 126 (1910).

### **Existence as Unit.**

Any area which was sought to be incorporated must have existed as a unit and constituted a village in fact. *In re Chubbuck*, 71 Idaho 60, 226 P.2d 484 (1950).

### **Notice.**

Former section governing incorporation of villages did not provide for notice and none was required to be given to opponents of a proposed incorporation; further, the statute made it mandatory upon the county commissioners to create the village when petition therefor complied with statute and board was satisfied that a majority of the taxable inhabitants of the proposed village had signed the same and there were 125 or more inhabitants actually resident of the territory described in the petition. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

### **Order.**

Fact that order of board of commissioners declaring town incorporated failed to designate metes and bounds of town did not affect legality of



incorporation, where petition for incorporation clearly designated said boundaries and order referred to petition and granted it without change or modification. *State ex rel. Holcomb v. Inhabitants of Pocatello*, 3 Idaho 174, 28 P. 411 (1891).

Fact that order incorporating a city did not state that 200 or more inhabitants were legal residents of territory described in petition did not render order void where same uses words “taxable inhabitants,” and shows that a sufficient number of taxable inhabitants signed petition. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

### **Petition.**

Attempted incorporation of a town was void where petition for incorporation failed to describe metes and bounds of any tract of land whatever. *Wardner v. Pelkes*, 8 Idaho 333, 69 P. 64 (1902).

Former section governing incorporation of villages was satisfied if the petition for incorporation which was introduced into evidence without objection set forth the metes and bounds of the proposed village. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

Withdrawal of names from a petition for incorporation of a proposed village on the plea that such signatures were made upon false information would not have been permitted where board of county commissioners had acted on such petition. *In re Riggins*, 68 Idaho 547, 200 P.2d 1011 (1948).

If the district court found that the board of county commissioners did not abuse its discretion in granting one of the petitions for incorporation, then their order incorporating that area as a village should have been affirmed. *In re Chubbuck*, 71 Idaho 60, 226 P.2d 484 (1950).

Where there were two rival petitions for incorporation, one including the area in the other, the determination of whether a village in fact exists and its extent was first for the board of county commissioners and on review, the district court. *In re Chubbuck*, 71 Idaho 60, 226 P.2d 484 (1950).

**§ 50-102. Manner of incorporating.** — When the provisions of section 50-101[, Idaho Code,] have been satisfied and the county board or a majority of the members thereof has been satisfied that 60 per cent of the qualified electors of the proposed city have signed such petition and that qualified electors to the number of 125 or more are actual residents of the territory described in the petition, the said board shall hold a public hearing upon said petition and fix a time and place therefor, not more than thirty (30) days from the filing of said petition, and cause notice thereof to be published twice prior to said hearing, in a newspaper of general circulation in said county and said board shall, on or before thirty (30) days following the date of said hearing, determine, by resolution, whether or not said proposed city may be incorporated and, in the event said board determines that the proposed city is to be incorporated, they shall enter the order of incorporation upon their records, and designate the metes and bounds thereof. Thereafter the said city shall be governed as other cities by the laws of the state of Idaho. The said county board shall, at the time of the incorporation: (1) proclaim that henceforth the former area shall be known as . . . . .; (2) order the clerk of the board of county commissioners to certify a copy of such proclamation, which shall be filed with the office of the secretary of state; (3) appoint a mayor and either four (4) or six (6) councilmen having the qualifications provided in this act, who shall at that time subscribe to the oath, and after receiving a certificate of election, they shall assume their offices and perform all the duties required of them by law, until the next general city election succeeding their appointment and until their successors are elected and qualified.

**History.**

1967, ch. 429, § 2, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Municipal elections, § 50-401 et seq.

Qualifications of councilmen, § 50-702.

Qualifications of mayor, § 50-601.

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

The term “this act” in the last sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**CASE NOTES**

**Requisite Filings.**

When Acequia was incorporated as a village in 1952, the procedure was governed by former § 50-701. The statutes then in effect for “villages” contained no requirement of filing a proclamation declaring incorporation of a city with the secretary of state. So, since this section and § 50-101 were not enacted until 1967, even though Acequia has not filed with the secretary of state a proclamation declaring incorporation of a city, Acequia was a duly formed city when the ordinances in question were enacted. [State v. Phillips, 118 Idaho 27, 794 P.2d 297 \(Ct. App. 1990\).](#)

**§ 50-103. Census.** — Within 30 days following the proclamation of incorporation, the city council shall request that an official enumeration of the inhabitants of the newly incorporated city be taken by the bureau of census, U.S. department of commerce, for the purpose of ascertaining the population of said city, the results of which shall be certified to the offices of the county clerk and the secretary of state, and which shall then become the official census and be used for the purpose of apportioning any and all state collected moneys to said city until the next regular or subsequent census be taken.

**History.**

1967, ch. 429, § 3, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Census authorized, § 50-214.

Secretary of state, § 67-901 et seq.

**§ 50-104. Proof of corporate existence.** — All courts within the county in which such newly incorporated city is situated shall take judicial notice of the corporate capacity and existence of such city. In all other courts of the state the corporate capacity and existence of such city may be proved by copies of the certificate of incorporation filed with the office of the secretary of state, duly authenticated, declaring the same to be a city.

**History.**

1967, ch. 429, § 4, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Proof of corporate existence, § 50-201.

Secretary of state, § 67-901 et seq.

**CASE NOTES**

**Cited** *State v. Phillips*, 118 Idaho 27, 794 P.2d 297 (Ct. App. 1990).

Decisions Under Prior Law Judicial Notice.

Instruction that judicial notice could have been taken of fact that city in question in prosecution of city treasurer for embezzlement was a city of the second class was not erroneous. *State v. Clark*, 47 Idaho 750, 278 P. 776 (1929).

Idaho Code Ch. 2

• [Title 50](#) », « [Ch. 2](#) »

## Chapter 2

### GENERAL PROVISIONS — GOVERNMENT — TERRITORY

Sec.

- 50-201. Proof of corporate existence — Effect of this act.
- 50-202. Existing rights and liabilities not affected — Operation of prior incorporated cities and villages.
- 50-203. Officials — Compensation.
- 50-204. Appointment of officers — Oath — Bond.
- 50-205. Refusal to confirm appointments — Vacancies.
- 50-206. Removal of appointive officers.
- 50-207. Duties of the clerk — Journal — Administering oaths.
- 50-208. Duties of treasurer — Record of outstanding bonds.
- 50-208A. Duties of city attorney.
- 50-209. Powers of policemen.
- 50-210. Boards — Commissions.
- 50-211. Supervision of elections. [Repealed.]
- 50-212. Official depository. [Repealed.]
- 50-213. Official newspaper.
- 50-214. Census authorized.
- 50-215. Prosecutions against corporations under city ordinance.
- 50-216. Compelling attendance of witnesses before council.
- 50-217. Payment of judgments.
- 50-218. Prohibition against recognition of invalid or stale claims.
- 50-219. Damage claims.
- 50-220. Acquisition and control of lands outside corporate limits — Purpose.

- 50-221. Cities situated on navigable lakes and streams — Extension of boundaries into waters.
- 50-222. Annexation by cities.
- 50-222A. Annexation of noncontiguous territory. [Repealed].
- 50-223. Annexation ordinance to be filed.
- 50-224. Effect of annexation — Cemetery districts exempted.
- 50-225. Exclusion of territory.
- 50-226. Separation of agricultural lands — Petition.
- 50-227. Separation of agricultural lands — Notice of petition and hearing thereon.
- 50-228. Separation of agricultural lands — Reply to protests — Verification.
- 50-229. Separation of agricultural lands — Hearing.
- 50-230. Separation of agricultural lands — Judgment of separation.
- 50-231. Separation of agricultural lands — Liability for bonded indebtedness.
- 50-232. Separation of agricultural lands — Streets not affected by separation.
- 50-233. Separation of agricultural lands — Appeal.
- 50-234. Lease of mining property by city.
- 50-235. Tax levy for general and special purposes.
- 50-236. Capital improvement fund levy — Limitations.
- 50-237. Borrow money.



**§ 50-201. Proof of corporate existence — Effect of this act.** — The corporate name of each city governed by this act shall be City of . . . . . All courts within the county in which such city is situated shall take judicial notice of the corporate capacity and existence of such city, and of the fact that such city is identical with, and a continuation of such former corporation. In all other courts of the state the corporate capacity and existence of such city may be proved by copies of the certificate of incorporation, required to be filed with the secretary of state, duly authenticated, declaring the same to be a city.

All by-laws, ordinances and resolutions lawfully passed and in force in any city under its former organization, shall remain in full force and effect until altered or repealed by the mayor and council under the provisions of this act.

The territorial limits of each city shall remain the same as under its former organization; but such territorial limits may be extended or changed as may be provided by law; and the rights and property of every description which are vested in any city under its former organization shall remain in full force and effect.

Each city shall be the successor of its former organization and shall have perpetual succession. No right or liability of any city, either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change. It shall have and exercise all powers, functions, rights and privileges, now or hereafter granted it, and shall be subject to all the duties, obligations, liabilities and limitations now or hereafter imposed upon such city by the constitution and laws of the state of Idaho.

Processes and notices affecting corporations shall be served upon the mayor and in his absence upon the clerk or in the absence of such officers, then by leaving a certified copy at the office of the clerk.

### **History.**

1967, ch. 429, § 5, p. 1249; am. 1982, ch. 121, § 1, p. 347.

## **STATUTORY NOTES**

### **Cross References.**

City reorganized under general law, proof of corporate existence, § 50-2306.

Secretary of state, § 67-901 et seq.

Village incorporated as city, proof of corporate existence, § 50-104.

### **Compiler's Notes.**

The term "this act" in the section heading, near the beginning of the first paragraph and at the end of the second paragraph refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

### **CASE NOTES**

#### **Decisions Under Prior Law Provisions of City Charter.**

The Boise City charter and its amendments were special acts of the legislature and, therefore, were not included in the provision of the former law that "all by-laws, ordinances and resolutions" in force in a city under its former organization remain in force until altered or repealed. [\*Anderson v. Boise City\*, 91 Idaho 527, 427 P.2d 574 \(1967\)](#).

**§ 50-202. Existing rights and liabilities not affected — Operation of prior incorporated cities and villages.** — This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted [asserted], enforced, prosecuted or inflicted, as fully and to the same extent as if this act has not been passed.

All cities of the first class and all cities of the second class, heretofore incorporated under the general laws of this state, and heretofore operating with a mayor and council, shall continue to operate with a mayor and a council under the provisions of this act. All villages, heretofore incorporated under the general laws of this state, and heretofore operating with a board of trustees, shall hereafter operate with a mayor and a council under the provisions of this act. All cities and villages, heretofore incorporated under the general laws of this state, and heretofore operating under chapters 36, 43 or 49, title 50, Idaho Code, shall hereafter operate under sections 50-805 through 50-904 [sections 50-801 through 50-812, Idaho Code], and enjoy all powers and privileges given under the provisions of this act.

### **History.**

1967, ch. 429, § 473, p. 1249.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” throughout the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The phrase “the time this act takes effect” in the first paragraph refers to the effective date of S.L. 1967, Chapter 429, which was effective April 12, 1967.

The bracketed word “asserted” near the end of the first paragraph was inserted by the compiler to correct the enacting legislation.

The references to “chapters 36, 43 or 49, title 50, Idaho Code” near the end of the section are to those chapters of the former title 50 of the Idaho Code which were repealed by S.L. 1967, ch. 429, § 472. Such provisions related to the commission plan, city manager plan and council-manager-mayor plan of government, respectively.

The reference to “sections 50-805 through 50-904” near the end of this section (which appears in S.L. 1967, ch. 429, as a reference to sections 144 through 155) appears to be an error in the session law and, therefore, the bracketed reference to [sections 50-801 through 50-812, Idaho Code] has been inserted by the compiler.

**§ 50-203. Officials — Compensation.** — The officials of each city shall consist of a mayor and either four (4) or six (6) councilmen whose compensation shall be fixed by ordinance published at least seventy-five (75) days before any general city election, which ordinance shall be effective for all said officials commencing on January 1 following said election and continuing until changed pursuant to this section.

**History.**

1967, ch. 429, § 33, p. 1249; am. 1976, ch. 45, § 8, p. 122; am. 2006, ch. 105, § 1, p. 288.

**STATUTORY NOTES**

**Cross References.**

Qualifications, powers and duties of councilmen, § 50-701 et seq.

Qualifications, powers and duties of mayor, § 50-601 et seq.

**Amendments.**

The 2006 amendment, by ch. 105, substituted “published at least seventy-five (75) days” for “passed at least sixty (60) days.”

**Compiler’s Notes.**

Section 32 of S.L. 1976, ch. 45 read: “In order to provide an orderly sequence for implementation of the provisions of this act: (a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977; (b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; (c) Sections 16, 17, 18, 19, 23, 24, 25, 28, and 29 shall be in full force and effect on and after October 1, 1977.”

**CASE NOTES**

**Cited** *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

**§ 50-204. Appointment of officers — Oath — Bond.** — The mayor, except as otherwise provided in sections 50-801 through 50-812, with the consent of the council shall appoint a city clerk, a city treasurer, a city attorney and such other officers as may be deemed necessary for the efficient operation of the city. The city clerk, city treasurer, and such other officers as are designated by the council shall, before entering upon the duties thereof, execute a bond to the city in such penal sum as the city council may by ordinance determine, conditioned on the faithful performance of his duties. All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk, except the bond of the city clerk, which shall be filed with the mayor.

**History.**

1967, ch. 429, § 68, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Mayor and council to fill vacancies in office, § 59-905.

Worker's compensation applies to municipal officers and employees, § 72-205.

**CASE NOTES**

[Police officers.](#)

[Presumption of official action.](#)

**Police Officers.**

The historical progression of the relevant statutory sections shows the legislature's intention to limit the officers required by statute to be appointed by the mayor with the consent of the city council. Police officers, once included in the above category, are not expressly enumerated in the present version of this section, and the apparent legislative intent was to delete police officers from the requirement of mayoral appointment, with

city council approval, applicable to other officers. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

### **Presumption of Official Action.**

In a prosecution for resisting an officer in the performance of his duty, in the absence of a showing by the defendant that the city required police officers to post a bond, the court had to presume that the two complaining officers had been properly appointed and were carrying out the duties of the office. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

**Cited** *Bunt v. City of Garden City*, 118 Idaho 427, 797 P.2d 135 (1990).

## Decisions Under Prior Law

**Policemen.**

**Removal.**

**Statute of limitations.**

**Policemen.**

Under former section the mayor was authorized to appoint policemen by and with the consent of the council; this was the only method by which policemen of a city could be appointed. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

**Removal.**

No power exists to dismiss or discharge any elective officer. All officers having anything to do with streets and sidewalks were elective officers, except street commissioner, who was appointed by and was under the direction and control of the board of trustees. *Miller v. Mullan*, 17 Idaho 28, 104 P. 660 (1909).

**Statute of Limitations.**

With respect to running of statute of limitations, cause of action on bond of city treasurer for money deposited without authority in bank which failed accrued when he failed to turn over funds of city at close of term. *City of St. Anthony v. Mason*, 49 Idaho 717, 291 P. 1067 (1930).

**§ 50-205. Refusal to confirm appointments — Vacancies.** — If the city council shall refuse to confirm any nomination, the mayor shall then within ten (10) days thereafter, nominate another person to fill the office and he may continue to nominate until his nominee is confirmed. If the mayor fails to make another nomination for the same office within ten (10) days after the rejection of a nominee, the city council shall appoint a suitable person to fill the office during the term. The affirmative vote of one half (1/2) plus one (1) of the members of the full council shall be required to confirm any nomination made by the mayor. Whenever a vacancy shall occur in an appointive office, the vacancy for the unexpired term shall be filled by appointment in the same manner as the original appointment.

**History.**

1967, ch. 429, § 69, p. 1249.



**§ 50-206. Removal of appointive officers.** — Any appointive officer, unless appointed under sections 50-801 through 50-812[, Idaho Code], may be removed by the mayor for any cause by him deemed sufficient; but such removal shall be by and with the affirmative vote of one half (1/2) plus one (1) of the members of the full council; provided, that the city council, by the unanimous vote of all its members, may upon their own initiative remove any appointive officer.

**History.**

1967, ch. 429, § 70, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

[At-will employees.](#)

[Chief of police.](#)

**[At-Will Employees.](#)**

A city clerk is an appointive officer who is an at-will employee who may be removed without notice or a hearing. A municipality does not alter that status by adopting a personnel manual, outlining hiring and termination procedures. [Boudreau v. City of Wendell, 147 Idaho 609, 213 P.3d 394 \(2009\).](#)

**[Chief of Police.](#)**

The office of chief of police is an appointive office subject to this section's employment-at-will framework, and removal of the office holder was, therefore, possible at the will of the employer, with no notice or hearing required. [Bunt v. City of Garden City, 118 Idaho 427, 797 P.2d 135 \(1990\).](#)

**§ 50-207. Duties of the clerk — Journal — Administering oaths. —**

The city clerk shall keep a correct journal of the proceedings of the council and shall have the custody of all laws and ordinances of the city. He may administer oaths to any person concerning any matter submitted to him or the city council. He shall also perform such other duties as may be required by ordinance.

**History.**

1967, ch. 429, § 71, p. 1249; am. 1976, ch. 49, § 1, p. 148; am. 1979, ch. 30, § 1, p. 246.

**STATUTORY NOTES**

**Cross References.**

Annexed land, duty to record ordinance including legal description and map, § 50-223.

Entering call and objects of special meetings of city council on journal, §§ 50-604, 50-706.

Excluded land, duty to record ordinance including legal description and map, § 50-225.

Filing copy of judgment separating agricultural lands, § 50-230.

Municipal elections, powers of clerk, § 50-403.

**CASE NOTES**

Decisions Under Prior Law

[Duties of clerk.](#)

[Mandate to draw warrant.](#)

**[Duties of Clerk.](#)**

City could have, by ordinance, added to duties of city clerk. [State v. Dawe, 31 Idaho 796, 177 P. 393 \(1918\).](#)

### **Mandate to Draw Warrant.**

Where city council allowed a claim, if city clerk refused to draw a warrant in payment thereof, he could be compelled by writ of mandate to do so; he had no discretion in premises; his duty was merely ministerial. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

**§ 50-208. Duties of treasurer — Record of outstanding bonds. — (1)**

The treasurer of each city shall be the custodian of all moneys belonging to the city. He shall account for each fund or appropriation made in its annual budget appropriation or otherwise directed by the city council. Such accounting shall track the debits and credits relating thereto. The treasurer shall on a monthly basis, and no more than sixty (60) days after the conclusion of each month at a regular meeting of the city council, render an accounting to the city council showing the financial condition of the treasury at the date of such accounting. The report shall state the balances of accounts maintained in the city's treasury. The treasurer shall also make available credit and debit details of all such accounts when required by the mayor or by action of the governing board. Making the quarterly treasurer's report available for public review on the city's website within thirty (30) days of the conclusion of each quarter shall satisfy publication requirements established by section 50-1011, Idaho Code.

(2) The treasurer shall also keep a record of all outstanding bonds against the city showing the number, amount of each, and to whom said bonds were issued; and when any bonds are purchased, paid or canceled. In his annual report, the treasurer shall describe particularly the bonds issued and sold during the year and the fiscal terms of the sale including the expenses related thereto.

**History.**

1967, ch. 429, § 72, p. 1249; am. 1976, ch. 49, § 2, p. 148; am. 2017, ch. 129, § 1, p. 303.

**STATUTORY NOTES**

**Cross References.**

Deposit of funds as provided by ordinance, § 50-1013.

Duty to publish quarterly financial statements, § 50-1011.

**Amendments.**

The 2017 amendment, by ch. 129, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler's Notes.**

Section 4 of S.L. 2017, ch. 129 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

## **CASE NOTES**

### **Decisions Under Prior Law [Construction.](#)**

#### **[Statute of limitations.](#)**

#### **[Construction.](#)**

Former section governing duties of treasurer was not mandatory and self-executing to extent that it could have determined and declared existence of fact upon which law operates. Board must have first found fact to exist that treasurer had failed or neglected to make reports as required by law before they could have declared office vacant. [Kendrick v. Nelson, 13 Idaho 244, 89 P. 755 \(1907\).](#)

#### **[Statute of Limitations.](#)**

With respect to running of statute of limitations, cause of action on bond of city treasurer, for money deposited without authority in bank which failed, accrued when he failed to turn over funds of city at close of term. [City of St. Anthony v. Mason, 49 Idaho 717, 291 P. 1067 \(1930\).](#)

**§ 50-208A. Duties of city attorney.** — (1) The city attorney shall be the legal advisor of the municipal corporation, may represent the city in all suits or proceedings in which the city is interested, and shall perform such other duties as may be prescribed by ordinances and resolutions duly passed. Nothing herein, however, shall preclude any city from employing alternative additional counsel when deemed advisable.

(2) The city attorney, his deputies, or contract counsel shall prosecute those violations of county or city ordinances, state traffic infractions, and state misdemeanors committed within the municipal limits. In so doing, the city attorney, his deputies, or contract counsel shall exercise the same powers as the county prosecutor including, but not limited to, granting immunity to witnesses.

**History.**

I.C., § 50-208A, as added by 1989, ch. 292, § 2, p. 719.

**CASE NOTES**

**Plea Agreement.**

Authority to bind another prosecutor requires that the bargaining prosecutor have the authority to prosecute the charge being bargained away or otherwise affected; therefore, convictions for violating a no contact order in Kootenai County were vacated because defendant relied on the promise of a city prosecutor in Ada County when he entered into a plea agreement, that included a promise of not being prosecuted for additional charges. This plea agreement was binding on other prosecutors as agents of the state of Idaho. *State v. Baker*, 156 Idaho 209, 322 P.3d 291 (2014).

**OPINIONS OF ATTORNEY GENERAL**

**Unlawful Abortions.**

Prosecutions for unlawful abortions under §§ 18-605 and 18-606, which are declared to be felonies, would be the responsibility of the prosecuting attorney. OAG 93-1.

**Local Marijuana Laws.**

Provision of local initiative pertaining to the use of marijuana for medicinal purposes that directs the municipal prosecuting attorney to dismiss certain misdemeanor drug charges is in direct conflict with state law and is invalid. OAG 07-02.

**§ 50-209. Powers of policemen.** — The policemen of every city, should any be appointed, shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as the sheriff or constable. Whenever such policemen shall be in fresh pursuit of any offender against any law of the state, including traffic infractions, or of the city and the offense has been committed within the corporate limits of such city, such policemen, while in such fresh pursuit may go beyond the corporate or geographical limits of such city subject to the provisions of chapter 7, title 19, Idaho Code, for the purpose of making such arrest or citation.

**History.**

1967, ch. 429, § 73, p. 1249; am. 1980, ch. 152, § 2, p. 322; am. 1987, ch. 85, § 1, p. 160.

**STATUTORY NOTES**

**Cross References.**

Policeman's retirement fund, § 50-1501 et seq.

**Effective Dates.**

Section 3 of S.L. 1980, ch. 152 declared an emergency. Approved March 25, 1980.

Section 3 of S.L. 1987, ch. 85 declared an emergency. Approved March 24, 1987.

**CASE NOTES**

Fresh pursuit.

Liability for intoxicated person.

Misuse of public money.

Oath of office.

**Fresh Pursuit.**



The only evidence necessary to show fresh pursuit is that the officer had knowledge that a crime or infraction was committed within his jurisdiction and that the officer pursued the suspect beyond the jurisdiction with the purpose of making an arrest, citing the suspect, or investigating the offense. Whether the officer's lights are flashing and siren is blaring is objective evidence of the officer's pursuit, but it is not necessary. It is well within an officer's discretion to wait for a safe point to stop a vehicle. *State v. Scott*, 150 Idaho 123, 244 P.3d 622 (Ct. App. 2010).

### **Liability for Intoxicated Person.**

Where police officers did not have control over vehicle of driver who was taken to hospital by police officers after being struck in the nose by bouncer at local bar, and doctor who treated driver told officers that driver was too intoxicated to drive and officers advised driver not to drive and to have someone pick him up and take him home, since no statute imposes a duty on police officers to arrest an intoxicated person who possesses the keys to a vehicle the person might drive, and who has not committed some other crime for which the officer might arrest the person, they were not liable in tort to person injured when driver attempted to drive himself in the vehicle after officers had returned his keys to him and departed. *Olguin v. City of Burley*, 119 Idaho 721, 810 P.2d 255 (1991).

### **Misuse of Public Money.**

Dismissal of charge of misuse of public money was affirmed because defendant, a police officer, was not within the class of persons who were charged with the receipt, safe keeping, transfer or disbursement of public moneys. *State v. Pruett*, 143 Idaho 151, 139 P.3d 753 (Ct. App. 2006).

### **Oath of Office.**

This section indicates that the decision to appoint police officers is entirely discretionary with the municipality and, thus, although police officers are public officers whose duties relate to governmental functions of a municipality, a police officer does not fill an office created by the laws of the state of Idaho. Even though a city may require a police officer to take an oath before assuming the obligations and responsibilities of office, police officers are not required by § 59-401 to take an oath, and, where defendant was charged with resisting an officer in the performance of his duty, the

state was not required to prove that an oath of office was taken pursuant to § 59-401. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

### Decisions Under Prior Law

Actions against police officers.

Ejection of person from police station.

Time and limit of authority.

#### **Actions Against Police Officers.**

Where police officers were sued for battery by citizens they should have notified the city and had the city made party defendant, if they desired the city to furnish counsel and defend the action. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

Reimbursement for attorney's fees and expenses for defending an action against police officers could not be given by a city where the officers gave no notice to the city nor applied to the court to make the city a party defendant. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

#### **Ejection of Person From Police Station.**

If a wife was guilty of misconduct, which required her removal from a room at police headquarters, where the chief of police was questioning her husband, who had been arrested, chief of police was authorized, after requesting the wife to desist or leave the room, and after giving her time to leave, to eject her without becoming liable for assault and battery, provided he used no more force than was necessary. *Cornell v. Harris*, 60 Idaho 87, 88 P.2d 498 (1939).

#### **Time and Limit of Authority.**

Former similar section did not enumerate powers, or place exact limits on authority, which a police officer may lawfully exercise in performance of his duties. *Cornell v. Harris*, 60 Idaho 87, 88 P.2d 498 (1939).

## OPINIONS OF ATTORNEY GENERAL

### **Local Marriage Laws.**

Provision of local initiative pertaining to the use of marijuana for medicinal purposes that restricts enforcement of state law by summons only is in direct conflict with this section and therefore is invalid. OAG 07-02.

**Private Peace Officers.**

No authority exists for a city to appoint the employees of a private company to serve as “peace officers.” OAG 08-02.

**RESEARCH REFERENCES**

**ALR.** — Right of privacy. [57 A.L.R.3d 16](#).

**§ 50-210. Boards — Commissions.** — The mayor and council shall have authority to appoint such boards, commissions and committees as may be deemed necessary or expedient to assist the mayor and council in better carrying out the responsibilities of their offices. The responsibilities, duties and authority granted permanent boards or commissions, shall be enumerated by ordinance. All appointments to permanent boards, commissions or committees shall be made by the mayor with the advice and approval of the council, and members of permanent boards, commissions or committees may in like manner be removed. Members of all such boards, commissions or committees shall serve without compensation, but actual and necessary expenses may be allowed by ordinance in the case of permanent boards, commissions or committees, or with prior approval of the mayor and city council for all other boards, commissions or committees. Unless otherwise specifically provided, each such board, commission or committee shall provide its own manner of organizing, but shall maintain such records and make such reports as the mayor and city council may require or request.

**History.**

1967, ch. 429, § 74, p. 1249; am. 1987, ch. 24, § 1, p. 33.

**§ 50-211. Supervision of elections. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 101, effective January 1, 2011.

**History.**

I.C., § 50-211, as added by 2007, ch. 202, § 10, p. 619.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-211, which comprised 1967, ch. 429, § 34, p. 1249, was repealed by S.L. 2007, ch. 202, § 9.

**§ 50-212. Official depository. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S. L. 1967, ch. 429, § 35, p. 1249, was repealed by S. L. 1969, ch. 255, § 6.

**§ 50-213. Official newspaper.** — The city council of each city shall, by ordinance, designate a newspaper within the provisions of title 60, Idaho Code, to be the official newspaper of that city. Said newspaper shall be one published within said city, or if none there be, then a newspaper published within the county in which said city is situated, or the nearest Idaho newspaper of general circulation within the city.

**History.**

1967, ch. 429, § 36, p. 1249; am. 1977, ch. 194, § 1, p. 528.

**CASE NOTES**

Branch office.

Place of publication.

**Branch Office.**

The newspaper's maintenance of a branch or satellite office in the city was not sufficient to make it the official newspaper of that city under this section, where its principal office was located in another city. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

**Place of Publication.**

Where a newspaper maintained its principal office in a city and had a second-class mailing permit from that city's post office, the type was set, photographs and advertising copy, and all of the other accouterments of putting out a newspaper (except for the actual printing) took place in the principal office, the newspaper was "published" in the city for official newspaper purposes. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

The language of this section manifests a legislative intent to distinguish a newspaper's place of publication from its place of circulation. *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

**§ 50-214. Census authorized.** — Any city council may provide, by resolution, for taking census or enumeration of the inhabitants thereof, and in such resolution shall provide for engaging the services of the bureau of census, U.S. department of commerce, to take said census or enumeration. Whenever it shall have been duly ascertained by any census or enumeration taken as hereinbefore provided, such fact shall thereupon by the clerk of said city, be certified to the secretary of state and to the county clerk wherein said city is situated. Provided further, that the population of any city determined by a special census shall thereafter be used in apportionment of state revenues in which the city may share.

**History.**

1967, ch. 429, § 7, p. 1249; am. 1973, ch. 21, § 1, p. 42.

**STATUTORY NOTES**

**Cross References.**

Census, § 50-103.

Secretary of state, § 67-901 et seq.

**Effective Dates.**

Section 2 of S.L. 1973, ch. 21 declared an emergency. Approved February 21, 1973.



**§ 50-215. Prosecutions against corporations under city ordinance. —**

In all prosecutions of any corporation for a violation of any city ordinance or any forfeiture or penalty provided by ordinance of such city, it shall be sufficient to make the corporation in its corporate name a defendant and service may be procured by serving of summons upon the president, secretary, or other managing agent of such corporation; and after the return of such service, the court shall be deemed to have acquired jurisdiction of the defendant and may proceed to try said cause; and any judgment imposed by said court shall have the force and effect of a judgment in a civil suit action and execution may issue thereon, and the corporate property, rights and franchises of said defendant may be sold thereunder in satisfaction of the same. The summons herein authorized to be served upon a defendant corporation shall contain a statement that the corporation shall appear forthwith and defend said action, and in case of failure to so appear and defend, a plea of not guilty will be entered by the court and the trial will proceed as if said defendant shall have appeared. A copy of the complaint shall be attached to and served with said summons.

**History.**

1967, ch. 429, § 8, p. 1249.

**§ 50-216. Compelling attendance of witnesses before council.** — The council of any city shall have power to compel the attendance of witnesses before the mayor and council or any committee thereof in any investigation ordered by the council: provided, that all process shall be issued by the mayor, and the attendance of such witnesses may be compelled by attachment, fine, or imprisonment; provided, further, that the mayor or president of the council shall preside at such hearing and administer all oaths and any person testifying falsely at such investigation shall be deemed guilty of perjury.

**History.**

1967, ch. 429, § 9, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Penalty for perjury, § 18-5409.

**§ 50-217. Payment of judgments.** — The city council shall have power to order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenues, franchises, rates or interest shall be attached, levied upon or sold in or under any process whatsoever.

**History.**

1967, ch. 429, § 10, p. 1249.

**CASE NOTES**

**Writ of Execution.**

In a breach of contract action, a writ of execution was not allowed against city funds. *City of Idaho Falls v. Beco Constr. Co.*, 123 Idaho 516, 850 P.2d 165 (1993).

**§ 50-218. Prohibition against recognition of invalid or stale claims. —**

The city council of any city shall never allow, make valid, or in any manner recognize any demand against the city, which was not at the time of its creation a valid claim against the same; nor shall it authorize to be paid any demand which, without such action, would be invalid or which shall then be barred by any statute of limitation or for which the city was never liable, and any such action shall be void.

**History.**

1967, ch. 429, § 11, p. 1249.

**§ 50-219. Damage claims.** — All claims for damages against a city must be filed as prescribed by chapter 9, title 6, Idaho Code.

**History.**

1967, ch. 429, § 12, p. 1249; am. 1983, ch. 93, § 1, p. 206.

**STATUTORY NOTES**

**Cross References.**

Filing claims against political subdivision, § 6-906.

**CASE NOTES**

Applicability.

Dismissal of suit.

Notice of claim.

Statute of limitations.

**Applicability.**

The notice provision of this section applies to actions against a city for breach of contract as well as to tort claims. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1983 amendment).

Where a party sought to recover \$7,568.10 for labor and materials it furnished as a subcontractor under a public works contract, the provisions of this section, requiring “claims for damages” to be submitted to a city within 60 days of the time the “damages” occurred, were not applicable. *H-K Contractors v. City of Firth*, 101 Idaho 224, 611 P.2d 1009 (1979) (decision prior to 1983 amendment).

**Dismissal of Suit.**

Where trash hauler filed a complaint for damages resulting from an alleged breach of a municipal garbage and refuse service contract before the lapse of sixty days after trash hauler informed the city clerk, city

councilmen and mayor by letter of trash hauler's intent to pursue litigation on the breach of contract, the action against the city was properly dismissed. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1983 amendment).

### **Notice of Claim.**

Where a trash hauler, who knew that a public hearing was to be held to determine whether trash hauler's contract to provide garbage and refuse service for the city should be forfeited, sent a letter to the city clerk, city councilmen, and mayor informing them that any attempt to award the contract to any other party would result in litigation for breach of contract, the city had notice of a probable claim for damages. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) (decision prior to 1983 amendment).

A city's actual notice of plaintiff's damages which resulted from the city's alleged failure to properly operate its municipal water system did not take plaintiff's complaint out of the notice of claim requirements. *Calkins v. Fruitland*, 97 Idaho 263, 543 P.2d 166 (1975) (decision prior to 1983 amendment).

The language contained in this section requires that a claimant must file a notice of claim for all damage claims, tort or otherwise, as directed by the filing procedure set forth in § 6-906 of the *Idaho Tort Claims Act*. *Sweitzer v. Dean*, 118 Idaho 568, 798 P.2d 27 (1990).

Where employee failed to file a notice of claim after being terminated by the city, the employee's claims for wrongful termination and breach of the covenant of good faith and fair dealing were barred. *Bryant v. City of Blackfoot*, 137 Idaho 307, 48 P.3d 636 (2002).

Section § 50-219 did not violate the unity requirement of Idaho *Const.*, *Art. III*, § 16 because its title encompassed the subject matter of damage claims against cities and served to fairly identify the content of the act. *Cox v. City of Sandpoint*, 140 Idaho 127, 90 P.3d 352 (Ct. App. 2003).

Where developer did not file notice of a claim of unjust enrichment against a city, regarding construction of a water supply line to a new subdivision, until almost one year after he had completed the construction,

his claim was not timely under § 6-906 and this section. *Scott Beckstead Real Estate Co. v. City of Preston*, 147 Idaho 852, 216 P.3d 141 (2009).

Fire chief's claim for breach of contract was dismissed because that claim was subject to the notice requirement under this section; neither the fire chief's demand letters providing written notice of his whistleblower claim nor his initial complaint met the notice requirements of § 6-906 and this section. *Brown v. City of Caldwell*, 769 F. Supp. 2d 1256 (D. Idaho 2011).

### **Statute of Limitations.**

This section is not a statute of limitations; its requirement of notice of claim is additional to the requirement of the applicable statute of limitations. *Harkness v. City of Burley*, 110 Idaho 353, 715 P.2d 1283 (1986) (decision prior to 1983 amendment).

In an action for additional fees, the time limit in § 6-906 began to run, not when the construction performance manager performed his additional services, but when the city denied the manager's fee request for those services. *City of Meridian v. Petra Inc.*, 154 Idaho 425, 299 P.3d 232 (2013).

District court did not err when it dismissed the property owner's state claims for unlawful taking, as they were time-barred by § 6-908, because they were filed more than 180 days after their cause of action accrued. *Alpine Vill. Co. v. City of McCall*, 154 Idaho 930, 303 P.3d 617 (2013).

**Cited** *J.P. Stravens Planning Assocs. v. City of Wallace*, 129 Idaho 542, 928 P.2d 46 (Ct. App. 1996); *Magnuson Props. P'ship v. City of Coeur d'Alene*, 138 Idaho 166, 59 P.3d 971 (2002); *Hehr v. City of McCall*, 155 Idaho 92, 305 P.3d 536 (2013).

### Decisions Under Prior Law

Cause of injury.

Construction.

Notice.

Place of injury.

Purpose of section.

Services of private detectives.

Sufficiency of compliance.

Suit against councilmen.

### **Cause of Injury.**

In stating the cause of injury it was not necessary to set forth negligence of the city that resulted in damages, but only the cause of the damages. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

### **Construction.**

Former section governing claims against first-class cities should not have been construed so as to defeat justice. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

### **Notice.**

Former section governing claims against first-class cities was substantially complied with where attorney for property owners by letter demanded that the city continue delivery of irrigation water to the property owners pursuant to contract of specified date, set out the damages sustained by reason of city's failure to deliver the irrigation waters, stated that the city would be held accountable for resulting damages, and set forth the place, character, and cause of the damages. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

While it was incumbent upon a claimant to plead and prove the giving of notice as required by former law, the giving of such notice was removed from the issues of the cause by the defendant's admission in open court that the city had received such notice. *McLean v. City of Spirit Lake*, 91 Idaho 779, 430 P.2d 670 (1967).

A property owner's letter to the village board calling attention to "this year's flood" and the subsequent removal of culverts and enlargement by the village of the ditch which extended the full length of the boundary between his land and the highway was sufficient notice to the village of the property owner's claim for damages resulting from the complete isolation of his real estate from vehicular access to any highway. *Weaver v. Village of Bancroft*, 92 Idaho 189, 439 P.2d 697 (1968).



### **Place of Injury.**

In action for injury to property, city address of plaintiff was sufficient to direct attention of city to premises located at that address. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

### **Purpose of Section.**

Main purpose of former statute was not to require such statement of circumstances as to show absolute liability, but rather such information that authorities might have been able to make full investigation of cause of injury and determine city's liability therefor. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

Purpose of former section governing claims against first-class cities was to give city notice of claim and opportunity "to ascertain the extent of the injury, investigate its cause and determine the liability of the city." *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927); *Dunn v. Boise City*, 48 Idaho 550, 283 P. 606 (1929).

The purpose of former section governing claims against first-class cities was to give the city prompt notice of the claim and a sufficient time in which to investigate the cause of the claim and the liability of the city. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

### **Services of Private Detectives.**

The action of a city council in attempting to ratify the act of the mayor in engaging the services of private detectives and in ordering the payment of such services was void. *Tate v. Johnson*, 32 Idaho 251, 181 P. 523 (1919).

### **Sufficiency of Compliance.**

Substantial compliance with statute was all that law required. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507 (1927).

Issue as to whether plaintiff's claim for damages had been properly served on city determined by Supreme Court in prior appeal remained the law of the case. *Yearsley v. City of Pocatello*, 71 Idaho 347, 231 P.2d 743 (1951).

### **Suit Against Councilmen.**

Plaintiff who sustained personal injuries as the result of a dead end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. [Lemmon v. Clayton, 128 F. Supp. 771 \(D. Idaho 1955\)](#).

## RESEARCH REFERENCES

**ALR.** — Amount of damages stated in notice of claim against municipality or county as limiting amount of recovery. [24 A.L.R.3d 965](#).

Municipal liability for property damage under mob violence statutes. [26 A.L.R.3d 1198](#).

Incapacity caused by accident in suit as affecting notice of claim required as condition of holding local governmental unit liable for personal injury. [44 A.L.R.3d 1108](#).

Consideration of fact that landowner's remaining land will be subject to assessment in fixing severance damages. [59 A.L.R.3d 534](#).

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. [62 A.L.R.3d 514](#).

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment. [95 A.L.R.3d 1243](#).

Recovery of exemplary or punitive damages from municipal corporation. [1 A.L.R.4th 448](#).

Governmental liability for failure to reduce vegetation obscuring view at railroad crossing or at street or highway intersection. [22 A.L.R.4th 624](#).

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. [40 A.L.R.4th 998](#).

Local government tort liability: minority as affecting notice of claim requirement. [58 A.L.R.4th 402](#).

Punitive damages: power of equity court to award. [58 A.L.R.4th 844](#).

Liability of municipal corporation for negligent performance of building inspector's duties. [24 A.L.R.5th 200](#).

**§ 50-220. Acquisition and control of lands outside corporate limits — Purpose.** — Cities are hereby authorized to acquire by purchase, lease or otherwise, lands outside of their respective corporate limits and to own, control, regulate and administer lands so acquired, either directly by said corporations or through any governmental agency or other agency.

**History.**

1967, ch. 429, § 13, p. 1249.

**§ 50-221. Cities situated on navigable lakes and streams — Extension of boundaries into waters.** — Cities situated on navigable lakes and streams, when the corporate boundaries or limits of such cities extend to the shorelines of such lakes or streams, shall have power by ordinance to fix, determine or extend its corporate boundaries or limits over the waters of such lakes or streams for a distance of one fourth (1/4) of a mile from the low-water mark of such navigable lakes, and for a distance of seventy-five (75) feet from the low-water mark of such navigable streams.

**History.**

1967, ch. 429, § 14, p. 1249.

**CASE NOTES**

**Decisions Under Prior Law Use of Lake May Be Regulated.**

A municipal corporation situated on a lake could, by ordinance, have prevented persons from living in a houseboat upon such lake, where the ordinance was for the promotion of the general health and welfare of the citizens of the municipality. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

**§ 50-222. Annexation by cities.** — (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

(3) Annexation classifications. Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:

(a) Category A: Annexations wherein:

(i) All private landowners have consented to annexation. Annexation where all landowners have consented may extend beyond the city area of impact provided that the land is contiguous to the city and that the comprehensive plan includes the area of annexation;

(ii) Any residential enclaved lands of less than one hundred (100) privately owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by the boundary of the city's area of impact; or

(iii) The lands are those for which owner approval must be given pursuant to subsection (5)(b)(v) of this section.

(b) Category B: Annexations wherein:

(i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation; or

(ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have consented to annexation prior to the commencement of the annexation process; or

(iii) The lands are the subject of a development moratorium or a water or sewer connection restriction imposed by state or local health or environmental agencies; provided such lands shall not be counted for purposes of determining the number of separate private ownerships and platted lots of record aggregated to determine the appropriate category.

(c) Category C: Annexations wherein the subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have not consented to annexation prior to commencement of the annexation process.

(4)(a) Evidence of consent to annexation. For purposes of this section, and unless excepted in paragraph (b) of this subsection, consent to annex shall be valid only when evidenced by written instrument consenting to annexation executed by the owner or the owner's authorized agent. Written consent to annex lands must be recorded in the county recorder's office to be binding upon subsequent purchasers, heirs, or assigns of lands addressed in the consent. Lands need not be contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to such city.

(b) Exceptions to the requirement of written consent to annexation. The following exceptions apply to the requirement of written consent to annexation provided for in paragraph (a) of this subsection:

(i) Enclaved lands: In category A annexations, no consent is necessary for enclaved lands meeting the requirements of subsection (3)(a)(ii) of this section;

(ii) Implied consent: In category B and C annexations, valid consent to annex is implied for the area of all lands connected to a water or wastewater collection system operated by the city if the connection was requested in writing by the owner, or the owner's authorized agent, or completed before July 1, 2008.

(5) Annexation procedures. Annexation of lands into a city shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.

(a) Procedures for category A annexations: Lands lying contiguous or adjacent to any city in the state of Idaho may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

(b) Procedures for category B annexations: A city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:

(i) The lands are contiguous or adjacent to the city and lie within the city's area of city impact;

(ii) The land is laid off into lots or blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5)

acres, or whenever the land is surrounded by the city. Splits of ownership which occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity;

(iii) Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:

(A) The manner of providing tax-supported municipal services to the lands proposed to be annexed;

(B) The changes in taxation and other costs, using examples, which would result if the subject lands were to be annexed;

(C) The means of providing fee-supported municipal services, if any, to the lands proposed to be annexed;

(D) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax-supported or fee-supported services to the lands proposed to be annexed; and

(E) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed;

(iv) Compliance with the notice and hearing procedures governing a zoning district boundary change as set forth in [section 67-6511, Idaho Code](#), on the question of whether the property should be annexed and, if annexed, the zoning designation to be applied thereto; provided however, the initial notice of public hearing concerning the question of annexation and zoning shall be published in the official newspaper of the city and mailed by first class mail to every property owner with



lands included in such annexation proposal not less than twenty-eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one (1) page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property owned by a county or any entity within the county that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies;

(B) Property owned by a nongovernmental entity that is used to provide outdoor recreational activities to the public, and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services, must have the express written permission of the nongovernmental entity owner;

(C) Land, if five (5) acres or greater, actively devoted to agriculture, as defined in [section 63-604\(1\), Idaho Code](#), regardless of whether it is surrounded or bounded on all sides by lands within a city, must have the express written permission of the owner; and

(D) Land, if five (5) acres or greater, actively devoted to forest land, as defined in [section 63-1701, Idaho Code](#), regardless of whether it is surrounded or bounded on all sides by lands within a city, must have the express written permission of the owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such

ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

(ii) Evidence of consent to annexation based upon the following procedures:

(A) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the area to be annexed, exclusive of the owners of lands that are subject to a consent to annex which complies with subsection (4)(a) of this section defining consent. Such notice shall invite property owners to give written consent to the annexation, include a description of how that consent can be made and where it can be filed, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.

(B) Each landowner desiring to consent to the proposed annexation must submit the consent in writing to the city clerk by a date specified in the notice, which date shall not be later than forty-five (45) days after the date of the mailing of such notice.

(C) After the date specified in the notice for receipt of written consent, the city clerk shall compile and present to the city council a report setting forth: (i) the total physical area sought to be annexed, and (ii) the total physical area of the lands, as expressed in acres or square feet, whose owners have newly consented in writing to the annexation, plus the area of all lands subject to a prior consent to annex which complies with subsection (4)(a) of this section defining consent. The clerk shall immediately report the results to the city council.

(D) Upon receiving such report, the city council shall review the results and may thereafter confirm whether consent was received from the owners of a majority of the land. The results of the report shall be reflected in the minutes of the city council. If the report as accepted by the city council confirms that owners of a majority of the land area have consented to annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and become effective according to the terms of the ordinance. If the report confirms that owners of a majority of the land area have not consented to the annexation, the category C annexation shall not be authorized.

(6) The decision of a city council to annex and zone lands as a category B or category C annexation shall be subject to judicial review in accordance with the procedures provided in chapter 52, title 67, Idaho Code, and pursuant to the standards set forth in [section 67-5279, Idaho Code](#). Any such appeal shall be filed by an affected person in the appropriate district court no later than twenty-eight (28) days after the date of publication of the annexation ordinance. All cases in which there may arise a question of the validity of any annexation under this section shall be advanced as a matter of immediate public interest and concern and shall be heard by the district court at the earliest practicable time.

(7) Annexation of noncontiguous municipal airfield. A city may annex land that is not contiguous to the city and is occupied by a municipally owned or operated airport or landing field. However, a city may not annex any other land adjacent to such noncontiguous facilities which is not otherwise annexable pursuant to this section.

### **History.**

[I.C., § 50-222](#), as added by 2002, ch. 333, § 2, p. 939; am. 2008, ch. 118, § 1, p. 327; am. 2009, ch. 53, § 1, p. 145; am. 2019, ch. 22, § 1, p. 22; am. 2020, ch. 240, § 1, p. 702.

## **STATUTORY NOTES**

### **Cross References.**

Consolidation of cities, § 50-2101 et seq.

Petition to incorporate, § 50-101.

### **Prior Laws.**

Former § 50-522, which comprised 1967, ch. 429, § 15, p. 1249; am. 1969, ch. 404, § 1, p. 1124; am. 1971, ch. 16, § 1, p. 29; am. 1972, ch. 37, § 1, p. 58; am. 1978, ch. 332, § 1, p. 861; am. 1979, ch. 89, § 1, p. 215, was repealed by S.L. 1993, ch. 55, § 2, effective January 1, 1995.

Another former § 50-222, which comprised [I.C., § 50-222](#), as added by 1993, ch. 55, § 3, p. 150; am. 1994, ch. 375, § 1, p. 1208; am. 1996, ch. 116, § 1, p. 427; am. 1998, ch. 191, § 1, p. 695, was repealed by S.L. 2002, ch. 333, § 1, p. 939.

### **Amendments.**

The 2008 amendment, by ch. 118, subdivided and rewrote paragraph (3) (a) to the extent that a detailed comparison is impracticable; in paragraphs (3)(b)(i) and (3)(c), substituted “have not consented to annexation prior to the commencement” for “have evidenced their consent to annexation at the outset”; in subsection (4), substituted “shall be valid only when evidenced by written instrument” for “shall be deemed given when evidenced by written authorization or approval” in the first sentence, substituted “operated by the city only if the connection was requested or completed

prior to July 1, 2008” for “operated by the city and for lands subject to a written consent to annex recorded in the county recorder’s office” in the second sentence, and substituted “Written consent to annex lands must be recorded in the county recorder’s office to be binding” for “Written consent to annex lands, if recorded in the county recorder’s office, shall be binding” in the third sentence; and rewrote paragraph (5)(c)(ii) to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 53, added the subsection (4)(a) designation, and therein, in the first sentence, inserted “and unless excepted in paragraph (b) of this subsection (4)” and “consenting to annexation” and deleted the former second sentence, which read: “Consent shall be implied for the area of all lands connected to a water or wastewater collection system operated by the city only if the connection was requested or completed prior to July 1, 2008”; and added subsection (4)(b).

The 2019 amendment, by ch. 22, substituted “paragraph (a) of this subsection” for “subsection (4)(a) of this section” at the end of paragraph (4)(b); and added paragraph (5)(b)(v)(C).

The 2020 amendment, by ch. 240, added paragraph (5)(b)(v)(D).

### **Effective Dates.**

Section 3 of S.L. 1996, ch. 116 declared an emergency. Approved March 6, 1996.

Section 4 of S.L. 1993, ch. 55 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after January 1, 1995.” Approved March 17, 1993.

Section 2 of S.L. 2019, ch. 22 declared an emergency. Approved February 14, 2019.

Section 2 of S.L. 2020, ch. 240 declared an emergency. Approved March 24, 2020.

## **CASE NOTES**

[Annexation.](#)

Costs.

Judicial review.

Validity of annexation.

### **Annexation.**

City's argument that a property owner's action to have an annexation agreement declared unenforceable because it was not pursued at the "earliest practicable time" and was, therefore, barred under subsection (6) of this section lacked merit; the "earliest practicable time" language is not intended to restrict the party's right. *Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.)*, 488 B.R. 130 (Bankr. D. Idaho 2012), aff'd, 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

### **Costs.**

Idaho cities have the essential power to contract for annexation and to charge an annexation fee, if such fee is necessary to "equitably allocate the costs of public services in management of development on the urban fringe." However, nothing in this phrase or in any other provision of this section can be read to empower a city to charge more than an amount necessary to equitably allocate the costs of the public services. *City of Hailey v. Old Cutters, Inc. (In re Old Cutters, Inc.)*, 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

### **Judicial Review.**

This section does not authorize judicial review of denial of a developer's application for annexation because it does not authorize judicial review of a category A annexation under the administrative procedures act. The right of judicial review depends upon an affirmative decision to annex property, and the legislature did not provide for judicial review when a city decides not to annex property. *Black Labrador Investing, LLC v. Kuna City Council*, 147 Idaho 92, 205 P.3d 1228 (2009).

Under this section, judicial review is not authorized for category A annexations. *In re City of Shelley*, 151 Idaho 289, 255 P.3d 1175 (2011).

City ordinance annexing a subdivision pursuant to category A was based on substantial evidence where the city produced a surveyed map showing the subdivision was contiguous to existing city property, and established

that the subdivision had been using city water system for many years, thereby impliedly consenting to annexation. [In re City of Shelley, 151 Idaho 289, 255 P.3d 1175 \(2011\)](#).

Court was not precluded from reviewing the terms of an annexation agreement between a city and a property owner. [Old Cutters, Inc. v. City of Hailey \(In re Old Cutters, Inc.\), 488 B.R. 130 \(Bankr. D. Idaho 2012\), aff'd, 2014 U.S. Dist. LEXIS 45787 \(D. Idaho Mar. 31, 2014\)](#).

### **Validity of Annexation.**

Property owner's obligation in an annexation agreement to pay a fee unquestionably in excess of that required to compensate the city for actual costs resulting from the annexation was unenforceable because nothing in the grant of power to cities under subsection (1) of this section authorized the city to condition annexation upon payment by the owner of more than its equitable share of the costs to be incurred by the city in annexing the property. [Old Cutters, Inc. v. City of Hailey \(In re Old Cutters, Inc.\), 488 B.R. 130 \(Bankr. D. Idaho 2012\), aff'd, 2014 U.S. Dist. LEXIS 45787 \(D. Idaho Mar. 31, 2014\)](#).

**Cited** [Highlands Dev. Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 \(2008\)](#).

### Decisions Under Prior Law

[Annexation.](#)

[Contiguous or adjacent land.](#)

[Description of property.](#)

[Equity.](#)

[Land subject to annexation.](#)

[Public street by dedication.](#)

[Railroad right of way.](#)

[Res judicata.](#)

[Validity of annexation.](#)

**[Annexation.](#)**

Where adjacent land had been annexed to a city under former section governing annexation by second-class cities, and all parties concerned had acquiesced therein, the authority of the city in such annexation could not have been collaterally attacked. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), aff'd, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Even when annexation was authorized, it must have been reasonable and the dividing of a drive-in theater business through the projection booth by the city limits line would have created problems, resulting in confusion in the levy of taxes, therefore such annexation of a part of the drive-in theater property would have been unreasonable. *Batchelder v. City of Coeur d'Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Annexation is a legislative act of the city government accomplished by the enactment of an ordinance. *Crane Creek Country Club v. City of Boise*, 121 Idaho 485, 826 P.2d 446 (1990).

### **Contiguous or Adjacent Land.**

Meaning of "contiguous or adjacent" land. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), aff'd, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Only contiguous or adjacent lands which owner had laid off in lots or blocks, or sold or begun to sell off in tracts not excluding five acres each, could have been annexed. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

An intervening river did not constitute a barrier to complete amalgamation of the communities upon its opposite banks and the construction applied to "contiguous or adjacent" to include both sides of the river, the river not being deemed a break to contiguity, was completely in accord with the legislative intent in the enactment of former § 50-303. *People ex rel. Redford v. Burley*, 86 Idaho 519, 388 P.2d 996 (1964).

### **Description of Property.**

The statutory notice requirements were satisfied if the notice fairly and accurately described the real property in question. Former statute could not be read to require more. *City of Lewiston v. Bergamo*, 119 Idaho 221, 804 P.2d 1352 (Ct. App. 1990).



## Equity.

Appellant was not estopped by laches to question the validity of the ordinance annexing his land to the village where the record reflects that appellant had not received any special benefit as a result of the annexation and there was no showing of prejudice to the village, such as expenditures by it for the benefit of appellant's property such as street improvements and sewer systems, etc., which would require the application of the doctrine of estoppel by laches, the fact that the symmetry of the village would be marred if appellant's realty be disannexed being of small consideration, further the lapse of time, although important was not, standing alone, a determining factor. *Finucane v. Hayden*, 86 Idaho 199, 384 P.2d 236 (1963).

While annexation may be authorized under this section, it also must pass the test of reasonableness. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

## Land Subject to Annexation.

Land sought to be annexed must have been laid off by owner or under his authority into lots or blocks of not more than five acres each or he must have sold or begun to sell such lands by metes and bounds in tracts not exceeding five acres. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Land to be annexed under former annexation statute must have been contiguous or adjacent to city, town, or village. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Portions of owner's original holdings still remaining in his possession could have been annexed, where he had subjected part of his land to annexation by the plattings and sales provided for by statute. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Ordinance annexing tract of land was void where 1,500 feet of land laid between city and the tract sought to be annexed. *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953).

Territory to be annexed pursuant to former annexation statute must have been adjoining, contiguous, coterminous or abutting. *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953).

Village ordinance which attempted to annex a strip of five acres of land connected to the village by a corridor strip or shoestring about three miles long and five feet wide mostly within a public highway was not valid, since the territory sought to be annexed was not contiguous or adjacent to the village. *Potvin v. Chubbuck*, 76 Idaho 453, 284 P.2d 414 (1955).

Former annexation statute indicated by the words “shall have been” and “has sold” that the platting or sale by previous owners subjected the property to annexation. *Batchelder v. City of Coeur d’Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Whenever land lying contiguous and adjacent to a municipality had been subdivided into lots or blocks containing not more than five acres, or had been subdivided or platted according to the laws of this state, or had been sold in tracts not exceeding five acres by the person or his authorized agent who was the owner of the land at the time of the subdividing, platting or selling, said land was thereafter subject to annexation under former annexation statute although the ownership of the land may have changed after the subdividing, platting or selling. *Batchelder v. City of Coeur d’Alene*, 85 Idaho 90, 375 P.2d 1001 (1962).

Once there has been a single sale of five acres or less from the tract, whether subdivided, platted or laid off or not, then the entire tract may be ripe for annexation, even though the remainder is greater than five acres. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

### **Public Street by Dedication.**

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

Strip of land did not become a public street by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years, and presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

### **Railroad Right of Way.**

The only restrictions on city’s annexation of railroad property under former similar section were that it must be reasonably assumed to be

necessary for orderly city development and that it must be land connected to city by more than just “shoe string or strip of land upon a public highway,” therefore when the railroads failed to produce proof that the annexation was not necessary for the orderly development of the city, the presumption of the validity of the duly enacted municipal ordinance continued to prevail. [Oregon S.L.R.R. v. City of Chubbuck, 93 Idaho 815, 474 P.2d 244 \(1970\).](#)

### **Res Judicata.**

Findings and judgment of the court in a prior case were not res judicata though same parties and issues were before the court because the controlling statute was substantially different as compared with the one under consideration before, and the record contained ample evidence that the city had changed substantially since the prior litigation. [Oregon S.L.R.R. v. City of Chubbuck, 93 Idaho 815, 474 P.2d 244 \(1970\).](#)

### **Validity of Annexation.**

Where a village located in one county passed an ordinance annexing territory in another county, the prosecuting attorney of the county in which the land sought to be annexed was located, who filed an action for a declaratory judgment to determine validity of ordinance was entitled to maintain same as a quo warranto proceeding, though quo warranto was not the exclusive remedy for testing validity of annexation. [Potvin v. Chubbuck, 76 Idaho 453, 284 P.2d 414 \(1955\).](#)

Municipal corporations had power to annex additional territory only under the conditions, restrictions and limitations which the legislature imposes; therefore if the essentials of the statute were lacking, annexation ordinance was void. [Oregon Short Line R.R. v. Village of Chubbuck, 83 Idaho 62, 357 P.2d 1101 \(1960\).](#)

The stipulation of the parties upon which the trial court based findings, showed without dispute that appellant’s agricultural lands had never been laid off, nor sold, nor bargained for sale, in lots, blocks or tracts of not exceeding five acres, therefore the annexation there under consideration, not having been accomplished in compliance with the statutory requirements, was void and the ordinance of the village so far as it attempted such

annexation, was void. *Finucane v. Hayden*, 86 Idaho 199, 384 P.2d 236 (1963).

The requirement of former annexation statute to the effect that the “land” should have been platted or segregated as specified therein before it could be annexed did not apply to river beds or channels, specifically referring to land that was readily susceptible to such platting and subdividing. *People ex rel. Redford v. Burley*, 86 Idaho 519, 388 P.2d 996 (1964).

Plaintiffs, owners of lands annexed to city by ordinance enacted pursuant to former law with notice to plaintiffs, were estopped from questioning validity of ordinance despite fact that at least some of their annexed lands were unsubdivided portions larger than five acres, devoted to agricultural uses; where plaintiffs failed to protest at the time of enactment of the ordinance and delayed bringing suit for more than two years, and where, as a result of the annexation, the value of plaintiffs’ lands were enhanced by work and expenditures of the city. *Alexander v. Trustees of Village of Middleton*, 92 Idaho 823, 452 P.2d 50 (1969).

If the complaining party comes forward with sufficient evidence that the tract is greater than five acres, and that the land by present owner has not been laid off or subdivided into lots or blocks of more than five acres each, and that the present owner has not sold or begun to sell the land by metes and bounds in tracts not exceeding five acres, then such party will have satisfied the burden of coming forward with sufficient evidence to rebut the presumption of the validity of the ordinance. *Hendricks v. City of Nampa*, 93 Idaho 95, 456 P.2d 262 (1969).

## RESEARCH REFERENCES

**ALR.** — What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 A.L.R.3d 589.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 A.L.R.5th 195.

Boundaries, capacity to attack the fixing or extension of municipal limits or boundary. 17 A.L.R.5th 195.

Refusal of municipality to annex impoverished area as violative of federal law. 22 A.L.R. Fed. 272.

**§ 50-222A. Annexation of noncontiguous territory. [Repealed].**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-222A**, as added by 1989, ch. 134, § 1, p. 300, was repealed by S. L. 2002, ch. 333, § 3.

**§ 50-223. Annexation ordinance to be filed.** — It shall be the duty of the clerk of any city, within ten (10) days following the effective date of any annexation ordinance: to file a certified copy of such ordinance with the county auditor, the county treasurer and the county assessor of the county in which the city is located, and with the Idaho state tax commission; to comply with the provisions of section 63-215, Idaho Code; and to order the annexed area surveyed if the council shall so direct; the cost of said survey to be prorated according to the amount of land surveyed and assessed to the then owners of said lands as provided in section 50-1008, Idaho Code, and thereupon and thereafter the corporate limits of such city shall extend to and include such land, and thereafter all property and persons within the limits of such annexed tract of land shall be subject to the provisions of all by-laws and ordinances of the said city.

**History.**

1967, ch. 429, § 16, p. 1249; am. 1971, ch. 7, § 1, p. 17; am. 1996, ch. 322, § 47, p. 1029.

**STATUTORY NOTES**

**Cross References.**

State tax commission, § 63-101.

**Effective Dates.**

Section 2 of S.L. 1971, ch. 7, provided that the act should be in full force and effect on and after July 1, 1971.

**CASE NOTES**

Decisions Under Prior Law [Collateral attack.](#)

[Zoning effect of annexation.](#)

**[Collateral Attack.](#)**

Collateral attack could not be made on annexation under former statute. [Hatch v. Consumers' Co., 17 Idaho 204, 104 P. 670 \(1909\), aff'd, 224 U.S.](#)

148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

### **Zoning Effect of Annexation.**

Former law, somewhat similar to this section, did not cause property annexed to the city to automatically fall within the most restrictive classification under a zoning ordinance placing in such classification “all those parts of the city not specifically included in other zones,” but such ordinance referred only to property within the city at the time of its enactment. *Gaige v. City of Boise*, 91 Idaho 481, 425 P.2d 52 (1967).

**§ 50-224. Effect of annexation — Cemetery districts exempted. —**

Upon compliance with the provisions of section 63-215, Idaho Code, all the property situated within the said annexed territory shall be subject to taxation as other property and persons within the corporate limits of such city, as though said annexed portion had been a part of the said city from the date of its incorporation.

When the annexed area or any part thereof is situated in any district, organized under the laws of this state, and said district is supported in whole or in part by taxes levied upon the annexed territory or any part thereof, and said district provides the same or similar services as that provided by the annexing city, the annexed area shall, upon the filing of the certified copy of said ordinance, be relieved of all liability for levies, taxes and assessments made by said district after the calendar year in which said annexation occurred. The purpose of this section is to prevent duplicate taxation of said annexed area for the same or similar services by such district and the annexing city.

The filing of the certified copy of said ordinance shall constitute a withdrawal of said annexed territory from the district, offering the same or similar services to the annexed territory as the annexing city, which withdrawal shall be effective as of December 31 of the calendar year of annexation, such withdrawal shall have the same effect as if the withdrawal had been made by the statutory procedure for withdrawing from such district.

However, this section shall not apply to public cemetery districts created prior to the date of the annexation ordinance, and that the annexing city may not levy taxes for cemetery maintenance within the bounds of an existing cemetery district. Cities which have heretofore levied taxes for cemetery maintenance on property within an existing cemetery district shall discontinue that practice from and after the date this act becomes effective.

**History.**

1967, ch. 429, § 17, p. 1249; am. 1967, ch. 432, § 1, p. 1418; am. 1970, ch. 47, § 1, p. 97; am. 1996, ch. 322, § 48, p. 1029.



## STATUTORY NOTES

### **Cross References.**

Cemetery maintenance district law, § 27-101 et seq.

### **Compiler's Notes.**

The phrase “the date this act becomes effective” at the end of the section refers to the effective date of S.L. 1970, Chapter 47, which was effective May 6, 1970.

### **Effective Dates.**

Section 2 of S.L. 1967, ch. 432 declared an emergency. Approved April 12, 1967.

## CASE NOTES

### Decisions Under Prior Law Zoning of Annexed Territory.

Although former section, while treating only of taxation, implied abstractly that, upon annexation, a new addition to the municipality would be automatically worthy of all benefits and subject to all liabilities of city government subject only to the rule that existing property rights cannot willy-nilly be abrogated, such implication did not place annexed property automatically in the most restrictive classification under a zoning ordinance placing in such classification “all those parts of the city not specifically included in other zones.” *Gaige v. City of Boise*, 91 Idaho 481, 425 P.2d 52 (1967).

**§ 50-225. Exclusion of territory.** — The boundaries of any city in this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities are hereby granted power to enact ordinances for that purpose. Such alteration shall not relieve any territory excluded from the limits of a city from its liability on account of any outstanding bonded or other indebtedness of such city or of any bonded or other indebtedness of any improvement district of which the excluded territory is an existing part at the time of the passage of such ordinance. For the purpose of collecting any of the indebtedness specified in this section, the territory so excluded shall be and remain under the jurisdiction of such city. Immediately after the passage, approval and publication of said ordinance, a copy thereof duly certified by the clerk of said city shall be filed in compliance with the provisions of section 63-215, Idaho Code. Thereafter, the boundaries of said city shall be as set forth in said ordinance.

**History.**

1967, ch. 429, § 18, p. 1249; am. 1996, ch. 322, § 49, p. 1029.

**CASE NOTES**

**Decisions Under Prior Law Taxpayer's Objection.**

The insignificant increase in a citizen and taxpayer's tax burden, due to the loss of taxes and license fees by reason of the ordinance disannexing certain property from the city, was not sufficient to establish his right to maintain an action to invalidate a city ordinance disannexing certain property. His remedy by way of referendum, as provided by the charter and ordinance in question, was adequate and complete. *Greer v. Lewiston Golf & Country Club*, 81 Idaho 393, 342 P.2d 719 (1959).

**§ 50-226. Separation of agricultural lands — Petition.** — The owner or adjoining owners of any platted or unplatted tract or tracts of land containing not less than five (5) acres, included within the corporate limits of any city in this state and used exclusively for agricultural purposes, provided, however, if there is upon or over such tract or tracts of land a railroad or canal right of way, such tract or tracts shall, if no other reason exists, be deemed to be used exclusively for agricultural purposes, within the meaning of this section, may petition the district court of the county in which such tract or tracts of land are situated for a judgment and decree of the court detaching such tract or tracts of land from such city.

**History.**

1967, ch. 429, § 97, p. 1249.

**CASE NOTES**

**Cited** *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973); *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001).

Decisions Under Prior Law

Agreement not to detach lands.

Construction and validity.

Petition.

**Agreement Not to Detach Lands.**

A landowner was not bound by an agreement providing that he would not insist on having his land detached from a village if the village would change a road which crossed the land to another location thereon, where the village built another road on the landowner's property and thereafter maintained both roads thereon instead of one. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

**Construction and Validity.**

Former sections governing separation of agricultural lands only gave court discretion to determine existence of facts upon which judgment of

detachment may have been based and was not delegation of legislative power to judicial officer. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

Facts that gave court power to determine enumerated. *Ball v. Parma*, 49 Idaho 40, 286 P. 24 (1930).

### **Petition.**

In proceeding to detach agricultural lands from a city, allegations that the plaintiff was the owner of such lands and that they were used exclusively for agricultural purposes, were included in corporate limits of city and exceeded five acres in extent were sufficient, other allegations being merely surplusage. *Hasbrouck v. City of Nampa*, 56 Idaho 353, 55 P.2d 141 (1936).

In proceeding to detach land from a village, the petition sufficiently alleged corporate existence of the village so as to conform to the statute authorizing such action where the village could not have been misled, notwithstanding the corporate existence was only inferentially alleged. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

**§ 50-227. Separation of agricultural lands — Notice of petition and hearing thereon.** — Upon the filing of such petition with the clerk of such court and paying a fee of ten dollars (\$10.00), which fee shall be in full for all clerk's fees except the regular fees provided by law on the appeals, the said court shall fix a time for the hearing thereupon, which shall not be less than thirty (30) days from the filing of such petition, and the petitioners shall serve or cause to be served a notice of such hearing upon the mayor or clerk of such city at least twenty (20) days before the time fixed for such hearing.

The said petitioner or petitioners shall also cause to be published once a week in two (2) consecutive weekly issues in some newspaper published in said city where the land sought to be detached is situated, or, in case no newspaper is published in said city, cause notices to be posted in at least three (3) conspicuous places in said city, said notice stating the time and place of such hearing and that any person desiring to protest or object to the granting of the prayer of said petition may do so by filing with the clerk of said court at least two (2) days before the day set for the hearing of said petition his objections or protests in writing. Such notice shall state generally the purpose of the petition and the location and description of the land sought to be detached from the corporate limits of said city.

### **History.**

1967, ch. 429, § 98, p. 1249.

### **CASE NOTES**

**Cited** *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

#### **Decisions Under Prior Law Pleadings.**

Former similar section was merely directory, and, where municipality had challenged sufficiency of petition and service, judgment of detachment should not have been entered until sufficiency had been determined. *In re Smith*, 38 Idaho 746, 225 P. 495 (1924).

Under procedure provided for in former similar section where a protestant has filed a motion to dismiss petition, a general and special demurrer and a protest, even though latter pleading was not filed two days before day set for hearing on petition, court had jurisdiction to hear issues tendered by such pleadings and could not properly strike or dismiss the same and default protestant because the protest was not filed within such time. *In re Smith*, 38 Idaho 746, 225 P. 495 (1924).

In proceeding to detach agricultural lands from a city, allegations that the plaintiff was the owner of such lands and that they were used exclusively for agricultural purposes, were included in corporate limits of city and exceeded five acres in extent were sufficient, other allegations being merely surplusage. *Hasbrouck v. City of Nampa*, 56 Idaho 353, 55 P.2d 141 (1936).

**§ 50-228. Separation of agricultural lands — Reply to protests — Verification.** — The petitioner or petitioners may, after any such petitions or objections are filed with the clerk at any time before the hour of the hearing on said petition, in their discretion, file with the judge or clerk replies in writing to said protests or objections. Neither said petition nor objections, protests nor reply need be verified.

**History.**

1967, ch. 429, § 99, p. 1249.

**§ 50-229. Separation of agricultural lands — Hearing.** — The hearing herein provided on said petition shall be held within the corporate limits of the city in which said lands sought to be detached are situated. The regular district court reporter shall reduce to writing the testimony and evidence introduced, the same as in trial of civil actions. The judge of such court, either before or after said hearing, may view the lands and premises sought to be detached, as well as other lands or property within the corporate limits of such city, which might in any way be affected by the granting of such petition, and lands on the outside of such city in the same vicinity or locality in which the lands sought to be detached are situated, and may consider such conditions as he finds in connection with the evidence introduced on the hearing, in making and arriving at his final decision and determination of the matter.

No tract or tracts of land shall be detached from any city which by such detachment, would materially mar the symmetry of such city.

**History.**

1967, ch. 429, § 100, p. 1249.

**CASE NOTES**

**View of Premises.**

A judge's view of the premises considered in connection with the map of the city and respondents' properties and the testimony relating to the lands surrounding respondents' properties was sufficient to support the court's finding that the overall symmetry of the city would not be materially marred by detachment of respondents' properties from the city. *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

**Cited** *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001); *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Decisions Under Prior Law [Findings of fact and conclusions of law.](#)

[Purpose of view.](#)



### **Findings of Fact and Conclusions of Law.**

In proceeding by landowners to withdraw lands from a village, a failure of the trial court to find on an issue tendered by an allegation in the village's answer and protest was not error under the statute providing that the making of written findings of fact or conclusions of law was not necessary. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

### **Purpose of View.**

Former similar section authorized a view of the land merely to enable the court more correctly to determine the existence of the facts required by another section to be found before there could be a judgment detaching the land, and therefore constituted no delegation of legislative power to the court. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

**§ 50-230. Separation of agricultural lands — Judgment of separation.** — If, upon the hearing, the court shall find that such tract or tracts of land are tracts containing at least five (5) acres and are included within the corporate limits of such city and the lands included within such tract or tracts are used exclusively for agricultural purposes, provided, however, if there is upon or over such tract or tracts of land a railroad or canal right of way, such tract or tracts shall, if no other reason exists, be deemed to be used exclusively for agricultural purposes, within the meaning of this section; that such lands do not receive sufficient special benefits to justify the retention of said lands within the corporate limits of such city, and that by the detachment of said lands the symmetry of the city would not be materially marred, then the judge of said court shall grant the prayer of said petition and shall enter judgment and decree accordingly: Provided, however, that if said petition prays for detaching several tracts of land the court may enter judgment granting the prayer of the petition as to such tract or tracts as come within his findings as aforesaid and deny such petition as to such tract or tracts which do not come within his findings as aforesaid.

And said tract or tracts of land sought to be detached and for which the said judgment is entered detaching the same shall, upon the entering of said judgment, become detached from such city and the corporate boundary line or limits of said city shall be deemed changed accordingly, and said tract or tracts so detached shall be free from the government of such corporation from said date.

It shall not be necessary for the judge of the court, prior to entering his judgment, or at any time, to make written findings of fact or conclusions of law. Within twenty (20) days after the filing of said decree the petitioner shall file or cause to be filed with the county recorder and with the city clerk a certified copy thereof.

### **History.**

1967, ch. 429, § 101, p. 1249.

## **CASE NOTES**

Detachment inappropriate.

Special benefits.

Symmetry.

### **Detachment Inappropriate.**

Where pastureland was surrounded by land being used in a variety of ways, from stockyards to homes, but all of the uses related to the existence of the community, detachment of the land was inappropriate. *Ramey v. City of Blackfoot*, 99 Idaho 264, 580 P.2d 1289 (1978).

The landowners did not meet their burden to support the separation of their land from the corporate limits by proving land use exclusively for agricultural purposes, because although some trees had been taken from the property and some seedlings were planted at one time, there had been no ongoing cultivation of the soil, harvesting of crops, or production of plants. *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001).

### **Special Benefits.**

Where police and fire protection were the only “special benefits” relied on by city to justify retention of tract of land within the city, the court did not abuse discretion in finding that such were not special benefits. *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

### **Symmetry.**

Where respondents introduced a map of the city and the surrounding area showing the relationship between the city and respondents’ properties and respondents both testified concerning the various properties bordering their land, such evidence was competent relating to the question of symmetry. *Hammond v. City of Chubbuck*, 95 Idaho 618, 515 P.2d 565 (1973).

Symmetry means more than due proportion of the parts of a body, conformance and consistency, and correspondence or similarity of form on opposite sides of an axis or center, it also involves the ability of the municipality to regulate adjoining lands whose use affects the quality of life in residential and business districts of the community; thus, symmetry requires not only regularity in the shape of the city, but also a measure of consistency, harmony and uniformity of regulation. *Ramey v. City of Blackfoot*, 99 Idaho 264, 580 P.2d 1289 (1978).

The finding that the symmetry of the city would be materially marred by the detachment of the property was supported by substantial and competent evidence based on the district judge's personal observations, maps, testimony and observations regarding the use of the surrounding properties, and the city's ability to regulate adjoining lands whose use would affect the quality of life in residential districts. *Williamson v. City of McCall*, 135 Idaho 452, 19 P.3d 766 (2001).

#### Decisions Under Prior Law

Construction.

Date of detachment.

Findings of fact and conclusions of law not necessary.

Questions of fact.

Symmetry.

**Construction.**

Former similar section vested the court with no discretion except that of determining the existence of the facts therein specified and did not constitute a delegation of legislative power to the court, the duty of the court to render the judgment therein mentioned being mandatory. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

**Date of Detachment.**

Matter of detachment of lands from municipality was purely legislative, and legislature may fix date of judgment as date of detachment. *Oakley v. Wilson*, 50 Idaho 334, 296 P. 185 (1931).

**Findings of Fact and Conclusions of Law Not Necessary.**

In proceeding by landowners to withdraw land from a village, a failure of the trial court to find on an issue tendered by an allegation in the village's answer and protest was not error under the statute providing that the making of written findings of fact or conclusions of law was not necessary. *Chaney v. Middleton*, 58 Idaho 289, 72 P.2d 850 (1937).

**Questions of Fact.**

In proceeding by landowners to withdraw land from a village, whether land received sufficient special benefit to justify its retention within the corporate limits of the village was a question of fact for the trial court. [Chaney v. Middleton, 58 Idaho 289, 72 P.2d 850 \(1937\).](#)

### **Symmetry.**

Where detachment of all tracts covered by petition would mar symmetry of municipality, detachment may have been awarded as to one or more tracts which would not do so. [Maxwell v. Buhl, 40 Idaho 644, 236 P. 122 \(1925\).](#)

Word “symmetry” as used in former similar section had not been judicially defined. In determining whether or not symmetry of city would be materially marred by detachment, regard must have been had to contours of land covered by city. Gullies and hills, while geometrically marring symmetry, may still have left city symmetrical in terms of former section. [Maxwell v. Buhl, 40 Idaho 644, 236 P. 122 \(1925\).](#)

Symmetry was discussed, and evidence in case was held sufficient to sustain finding that land in question was not entitled to detachment. [Ball v. Parma, 49 Idaho 40, 286 P. 24 \(1930\).](#)

Evidence justified judgment detaching lands from city on the ground that the plaintiff owned lands in excess of five acres within the corporate limits of the city, which were being used exclusively for agricultural purposes, and which did not receive sufficient special benefits, and that symmetry of city would not have been materially marred by their detachment. [Hasbrouck v. City of Nampa, 56 Idaho 353, 55 P.2d 141 \(1936\).](#)

**§ 50-231. Separation of agricultural lands — Liability for bonded indebtedness.** — Such separation shall not relieve any such tract of land from its liability on account of any outstanding bonded indebtedness of such city existing at the time of its separation therefrom.

**History.**

1967, ch. 429, § 102, p. 1429.

**CASE NOTES**

**Decisions Under Prior Law Liability for Bond Payments.**

Lands detached from municipality were taxable for payment of bonds issued after petition for detachment was filed but before judgment of detachment was rendered. *Oakley v. Wilson*, 50 Idaho 334, 296 P. 185 (1931).

**§ 50-232. Separation of agricultural lands — Streets not affected by separation.** — The detaching of any lands from the corporate limits of any city under the provisions of this chapter shall not affect or change the status of any public streets or highways as the same are laid out, constructed or dedicated at the time of such detachment, but any public streets or highways included within the territory detached shall cease to be a part of such city.

**History.**

1967, ch. 429, § 103, p. 1429.

**STATUTORY NOTES**

**Compiler's Notes.**

The words “this chapter” probably refer to §§ 50-226 — 50-233, which concern separation of agricultural lands.

**§ 50-233. Separation of agricultural lands — Appeal.** — Any city or any person aggrieved by the judgment of the court entered as herein provided may appeal from such decision and judgment to the Supreme Court. The procedure of said appeal shall be the same as the procedure on appeal from final judgment in civil actions.

**History.**

1967, ch. 429, § 104, p. 1249.



**§ 50-234. Lease of mining property by city.** — Except as otherwise provided by law, whenever it has been determined or appears probable that any property of a city has become valuable by reason of veins, lodes, or other deposits of mineral underlying said property, the corporate authority of any city, upon the affirmative vote of one half (1/2) plus one (1) of the members of the full council, shall have the power, by ordinance, to grant a lease in and to such minerals, with the right to mine for and extract the same, provided, that the surface of said property shall be in no wise interfered with or disturbed. Such lease shall provide for such royalties and shall contain such other terms and provisions as said council may deem proper, but in no case shall any such lease be made for a greater period than twenty-five (25) years.

**History.**

1967, ch. 429, § 19, p. 1249.

**§ 50-235. Tax levy for general and special purposes.** — The city council of each city is hereby empowered to levy taxes for general revenue purposes not to exceed nine tenths percent (.9%) of the market value for assessment purposes on all taxable property within the limits of the city in any one (1) year, and such levies for special purposes as are or may hereafter be provided, on all property within the limits of the city, taxable according to the laws of the state of Idaho, the valuation of such properties to be ascertained from the assessment rolls of the proper county.

**History.**

1967, ch. 429, § 37, p. 1249; am. 1974, ch. 186, § 2, p. 1491; am. 1995, ch. 82, § 21, p. 218.

**STATUTORY NOTES**

**Cross References.**

Airports, tax levy, § 21-404.

Capital improvement fund levy, § 50-236.

Certification and collection of city taxes, § 50-1007.

Policemen's pension, tax levy, § 50-1512.

Recreation and culture, special levy, § 50-303.

Special assessments for local improvements, § 50-1701 et seq.

Special tax assessments, § 50-1004.

**CASE NOTES**

Decisions Under Prior Law

[Construction.](#)

[License tax.](#)

[Property road tax.](#)

[Construction.](#)

Previous preparation and publication of estimate of probable amount of money necessary to be raised for all purposes, and passage of appropriation bill, constituted condition precedent to action under former section governing tax levies for general purposes. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

### **License Tax.**

Municipal corporations could not, in the exercise of their police power, levy and collect a license tax upon individuals or businesses for purposes of revenue (distinction between revenue and regulatory purposes). *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

### **Property Road Tax.**

Power of towns and villages to levy a tax for general revenue purposes did not authorize them to levy a property road tax. *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894).

**§ 50-236. Capital improvement fund levy — Limitations.** — Cities are hereby empowered to establish a “Capital Improvements Fund”, by ordinance, and levy a special tax not to exceed in the aggregate four-hundredths per cent (.04%) of market value for assessment purposes in any one (1) year. Said fund shall never exceed in the aggregate four-tenths per cent (.4%) of the market value for assessment purposes of the city. Such funds shall not be subject to the provisions of section 50-1014, Idaho Code. Said ordinance shall identify the specific purpose for which the capital improvements fund shall be used.

**History.**

1967, ch. 429, § 43, p. 1249; am. 1980, ch. 350, § 21, p. 877.

**§ 50-237. Borrow money.** — All cities may borrow money and pledge the credit, revenue and public property of the corporation for the payment thereof, in the manner provided by law, and to evidence the same by issuance of bonds, notes or warrants.

**History.**

1967, ch. 429, § 38, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Bond issues, § 50-1019 et seq.

Idaho Code Ch. 3

• [Title 50](#)», « [Ch. 3](#) »

## Chapter 3

### POWERS

Sec.

50-301. Corporate and local self-government powers.

50-302. Promotion of general welfare — Prescribing penalties.

50-302A. Confinement in city or county jail for violating ordinance.

50-303. Recreation and culture.

50-304. Preservation of public health.

50-305. Hospitals — Maintenance.

50-306. Public carriers.

50-307. License occupations and businesses.

50-308. Maintenance of peace — Licensing and regulating amusements.

50-309. Fire department — Fire zones.

50-310. Hazardous materials.

50-311. Creation — Vacation of streets — Eminent domain — Reversion of vacated streets.

50-312. Improvement of streets — Special levy.

50-313. Public ways — Supervision.

50-314. Streets and public places — Regulations.

50-315. Rehabilitation improvements.

50-316. Sidewalks — General regulations.

50-317. Removal of snow, ice, rubbish and weeds.

50-318. Identification of streets and houses.

50-319. Animals at large — Regulation.

50-320. Cemeteries.

50-321. Aviation facilities — Acquisition, operation and maintenance.

50-322. Transit systems.

50-323. Domestic water systems.

50-324. Cities authorized to jointly purchase or lease, maintain or operate a joint water system.

50-325. Power plants — Power distribution.

50-326. Water, light, power and gas plants — Leasing — Selling — Procedure.

50-327. Sale of excess power.

50-328. Utility transmission systems — Regulations.

50-329. Franchise ordinances — Regulations.

50-329A. Franchise ordinances — Fees.

50-330. Rates of franchise holders — Regulations.

50-331. Control of waters.

50-332. Control of sewers and drains.

50-333. Flood prevention — Drainage.

50-334. Abatement of nuisances.

50-335. Destruction of buildings inimical to safety and health.

50-336. Traffic safety education program — Fees.

50-337 — 50-340. Joint service functions. [Repealed.]

50-341. Competitive bidding — Application of law. [Repealed.]

50-342. Electric power — Purchase or disposal.

50-342A. Participation in generation and transmission projects.

50-343. Regulation of firearms — Control by state. [Repealed.]

50-344. Solid waste disposal.

50-345. Computerized mapping system fees.



**§ 50-301. Corporate and local self-government powers.** — Cities governed by this act shall be bodies corporate and politic; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.

**History.**

1967, ch. 429, § 6, p. 1249; am. 1976, ch. 214, § 1, p. 784.

**STATUTORY NOTES**

**Cross References.**

Contracts with water companies for municipal water supply, § 30-801.

Corporations, municipal corporation may not become stockholder, Idaho Const., Art. XII, § 4.

Declaratory Judgment Act, “municipal corporation” included in term “person,” § 10-1213.

Declaratory judgments, rights affected by municipal ordinance, § 10-1202.

Eminent domain, § 7-701 et seq.

Garnishee, liability of municipal officers as, § 11-727.

Hospital services, contract for, § 39-1416.

Interest rate on warrants after presentment for payment, § 31-2124; indorsement when not paid upon presentation, § 31-2125.

Joint city and county sites and buildings, § 31-1005.

Libraries, establishment, § 33-2614.

Municipal corporations may contract indebtedness and own property for school, water, sanitary, and illuminating purposes, Idaho [Const., Art. XII, § 4](#).

Rights of way for water and canal corporations, § 30-802; works not to obstruct public highways, § 30-803.

Venereal diseases, examination and treatment of inmates of city prisons, § 39-604.

Water for domestic purposes, sanitary regulations, § 37-2102.

Worker's compensation law applies to municipal officers and employees, § 72-205.

### **Compiler's Notes.**

The term "this act" near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

## **CASE NOTES**

### **Construction of Powers.**

Because the authority to impose annexation fees in excess of an equitable allocation of costs is not authorized under § 50-222, a city cannot rely upon this section as authority for the imposition of such fees. [City of Hailey v. Old Cutters, Inc. \(In re Old Cutters, Inc\)](#), 2014 U.S. Dist. LEXIS 45787 (D. Idaho Mar. 31, 2014).

### **Decisions Under Prior Law**

[Construction of powers.](#)

[Filling stations.](#)

[Franchise ordinance subject to rate supervision.](#)

[Houseboats.](#)

[Municipal police power.](#)

[Nature of powers.](#)

[Right to sue.](#)

Tort liability.

### **Construction of Powers.**

Where statutory power of municipality was ambiguous, courts lean strongly toward doctrine of permitting municipalities to control their own local affairs. *Hodges v. Tucker*, 25 Idaho 563, 138 P. 1139 (1914).

Municipal corporations possessed only such powers as state conferred upon them, and only such rights could be exercised by them as were clearly conferred by state or were necessarily implied; any ambiguity or doubt must have been resolved in favor of the granting power, and regard must also have been had to constitutional provisions to secure liberty and protect rights of citizens. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Where power or authority was given to municipalities, it carried with it by implication the doing of those things necessary to make such things effective and complete, and a discretion as to manner in which power was to be carried out, if not specifically provided. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

### **Filling Stations.**

City could have passed ordinance governing erection of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

### **Franchise Ordinance Subject to Rate Supervision.**

Under former law a city had power to pass an ordinance and franchise contract for establishment of water system, but any such contract was subject always to power of legislature to prescribe a method of determining reasonable maximum rates to be charged as rental. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

### **Houseboats.**

Prohibiting anchoring or maintaining crafts used as residences as within city ordinance power in the interest of general health and welfare. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

### **Municipal Police Power.**

The vested right of a riparian owner to use a lake for mooring houseboat was subject to municipal police power and could be prohibited by ordinance. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

### **Nature of Powers.**

In granting a franchise by which rates are fixed or determined, municipal corporation was not exercising its own powers, but only such powers as have been conferred upon it by state. These powers could have been withdrawn at any time. It had no vested right to continued exercise of them, nor could it thereby obtain a vested right in any contract entered into or property acquired as against right of state. *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 173 P. 972 (1918).

### **Right to Sue.**

A village was a corporate entity, with right to sue in a proper court. While a village itself might have abated nuisance within its limits, in order to have abated public nuisance outside its boundaries, it was probably necessary, and undoubtedly proper, for it to apply to a court of equity for aid in protecting it from such harmful influence. *Village of Am. Falls v. West*, 26 Idaho 301, 142 P. 42 (1914).

### **Tort Liability.**

Cities and villages organized under general laws were liable in damages for a negligent discharge of the duty of keeping such streets and alleys in a reasonably safe condition for use by travelers. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903).

## **OPINIONS OF ATTORNEY GENERAL**

### **Membership in Associations.**

Payment of dues to municipal leagues or associations by cities and counties is an expenditure for a public purpose permitted by the Idaho constitution and statutes. The use of those dues for lobbying efforts is permissible if the lobbying is for an appropriate public purpose. OAG 89-7.

Elected officials may discuss potential public policy issues and determine association policy at meetings of the association of Idaho cities and Idaho association of counties. But local public policy must be determined and

adopted only after compliance with Idaho law, including the Idaho Open Meetings Law [§ 74-201 et seq.], and all other applicable laws in title 31 or 50, Idaho Code. OAG 89-7.

### **Private Peace Officers.**

No authority exists for a city to appoint the employees of a private company to serve as “peace officers.” OAG 08-02.

## **RESEARCH REFERENCES**

**ALR.** — Power of municipal corporation to submit to arbitration. [20 A.L.R.3d 569](#).

Validity of municipal regulation of aircraft flight paths or altitudes. [36 A.L.R.3d 1314](#).

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs. [43 A.L.R.3d 1394](#).

Power of municipal corporation to lease or sublet property owned or leased by it. [47 A.L.R.3d 19](#).

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. [51 A.L.R.3d 1061](#).

Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities. [57 A.L.R.3d 998](#).

Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services. [60 A.L.R.3d 714](#).

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. [81 A.L.R.3d 655](#).

Validity, construction, and effect of juvenile curfew regulations. [83 A.L.R.4th 1056](#).

**§ 50-302. Promotion of general welfare — Prescribing penalties. —**

(1) Cities shall make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry. Cities may enforce all ordinances by fine, including an infraction penalty, or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

(2) Any city which is participating in a federally mandated program, wherein penalties or enforcement remedies are required by the terms of participation in the program, may enforce such requirements by ordinance, to include a criminal or civil monetary penalty not to exceed one thousand dollars (\$1,000), or imprisonment for criminal offenses not to exceed six (6) months, or to include both a fine and imprisonment for criminal offenses.

**History.**

1967, ch. 429, § 27, p. 1249; am. 1976, ch. 145, § 2, p. 530; am. 1978, ch. 260, § 2, p. 566; am. 1990, ch. 201, § 1, p. 452; am. 2000, ch. 35, § 2, p. 63; am. 2005, ch. 359, § 15, p. 1133.

**STATUTORY NOTES**

**Cross References.**

Municipal corporations may make and enforce local police regulations, [Const., Art. XII, § 2](#).

Ordinances, § 50-901 et seq.

**Compiler's Notes.**

The term “this act” in the first sentence in subsection (1) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

## **Effective Dates.**

Section 3 of S.L. 2000, ch. 35 provided that the act shall be in full force and effect on and after July 1, 2000.

## **CASE NOTES**

Control of public intoxication.

Municipal ordinance must yield to state statute.

### **Control of Public Intoxication.**

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, was directed toward the control of public intoxication, the ordinance was a valid exercise of the authority delegated to the city by this section to maintain the peace, good government, and welfare of the city. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

### **Municipal Ordinance Must Yield to State Statute.**

The provisions of a city ordinance must yield to the provisions of a state statute under Idaho *Const., Art. XII, § 2*. Accordingly, where defendant, upon approach of police car, which displayed flashing lights but did not sound siren, turned left in front of police car causing collision rather than pulling to right-hand side of road or stopping, conviction under § 49-645 [now § 49-625], which requires that drivers yield for either an audible or visual signal, was upheld even though the Boise City Code requires both an audible and visible signal. *State v. Barsness*, 102 Idaho 210, 628 P.2d 1044, appeal dismissed, 454 U.S. 958, 102 S. Ct. 495, 70 L. Ed. 2d 373 (1981).

**Cited** *Condie v. Mansor*, 96 Idaho 345, 528 P.2d 907 (1974).

## **Decisions Under Prior Law**

Construction of grants of power.

Filling stations.

Full police power over local concern.

Indictable misdemeanors.

Trials for violation.

Void ordinance.

### **Construction of Grants of Power.**

Under grants of power by legislature to municipal corporations, only such powers and rights could be exercised as were clearly comprehended within words of granting act or derived therefrom by necessary implication, regard being had to object of grant. Any ambiguity or doubt arising out of terms used by legislature must be resolved in favor of granting power. Regard must also have been had to constitutional provisions intended to secure liberty and to protect rights of citizens, to the end that no citizen shall be deprived of life, liberty or property without due process of law. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Provisions of former similar section were broad powers, but were to be looked to as limitations upon, rather than grants of power to, the municipalities. *Rowe v. City of Pocatello*, 70 Idaho 343, 218 P.2d 695 (1950).

### **Filling Stations.**

Municipal corporations may adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

### **Full Police Power over Local Concern.**

Where a city ordinance of Boise City classified dogs in a different manner than state statute and forbade owners to allow a vicious dog to run at large, the conviction of the owner for a violation of the city ordinance was not improper because Boise City possesses full police power over affairs of local concern. *State v. White*, 67 Idaho 309, 177 P.2d 472 (1947).

### **Indictable Misdemeanors.**

Municipality had no power to confer upon police judges jurisdiction summarily to hear and determine acts denominated by general law of state as indictable misdemeanors by enactment of an ordinance prohibiting such acts and prescribing a punishment therefor. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

### **Trials for Violation.**



Defendant convicted in municipal court of driving car on city street while intoxicated in violation of city ordinance on appeal to district court was entitled to trial by jury, since defendant was entitled to a trial de novo as though started or commenced in district court, and in district court the defendant was entitled to jury trial. *Miller v. Winstead*, 75 Idaho 262, 270 P.2d 1010 (1954).

### **Void Ordinance.**

That portion of an ordinance attempting to provide for imprisonment in village jail, except for default in payment of fine and costs, was held void. *State v. Bird*, 29 Idaho 47, 156 P. 1140 (1916).

## **OPINIONS OF ATTORNEY GENERAL**

### **Disaster Preparedness.**

Although § 46-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Thus, unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city's limits, however, the city government has the responsibility to handle the situation. OAG 89-9.

The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens. OAG 89-9.

**§ 50-302A. Confinement in city or county jail for violating ordinance.**

— Any person charged with or convicted of violation of a city ordinance and subject to imprisonment shall be confined in the city jail; provided, however, that any city shall have the right to use the jail of the county for the confinement of such persons but it shall be liable to the county for the cost of keeping such prisoners.

**History.**

1970, ch. 30, § 1, p. 60.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1970, ch. 30 provided that the act should be effective at 12:01 a.m. on January 11, 1971.

**CASE NOTES**

**Liability for Costs of Jailing.**

While this section does make the city liable to the county for the cost of jailing prisoners charged with or convicted of a city ordinance and § 20-605 places on the city liability for the cost of keeping prisoners in other counties if that offending person was either initially arrested by a city police officer for violation of a city ordinance or for violation of the state motor vehicle laws. Nevertheless, a city is not liable for the cost of keeping prisoners in the county jail if the prisoner has been arrested by a city police officer for violation of a state motor vehicle law. The county has “the duty” to pay for the incarceration of such prisoners. *County of Bannock v. City of Pocatello*, 110 Idaho 292, 715 P.2d 962 (1986).

This section requires the city to pay the county for the cost of confining any person charged with or convicted of violation of a city ordinance; it does not require the city to pay for city ordinance violators who were confined in contiguous counties. *County of Bannock v. City of Pocatello*, 110 Idaho 292, 715 P.2d 962 (1986).

## **OPINIONS OF ATTORNEY GENERAL**

### **Sheriff's Duty.**

Counties are responsible for the cost incurred by the county jail in housing a prisoner who has been charged with a state law violation committed within city limits and investigated by city police officers, and, while counties may bring legal action to recoup jail costs incurred for city prisoners charged under city ordinances or state motor vehicle laws, sheriffs cannot refuse to accept city prisoners. OAG 84-4.

**§ 50-303. Recreation and culture.** — Cities are hereby empowered to create, purchase, operate and maintain recreation and cultural facilities and activities within or without the city limits and regulate the same, and to levy a special tax not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the limits of the city for recreational programs.

**History.**

1967, ch. 429, § 28, p. 1249; am. 1995, ch. 82, § 22, p. 218.

**§ 50-304. Preservation of public health.** — Cities may establish a board of health and prescribe its powers and duties; pass all ordinances and make all regulations necessary to preserve the public health; prevent the introduction of contagious diseases into the city; make quarantine laws for that purpose and enforce the same within five (5) miles of the city.

**History.**

1967, ch. 429, § 29, p. 1249.

**CASE NOTES**

**Cited** Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene, 114 Idaho 588, 759 P.2d 879 (1988).

**§ 50-305. Hospitals — Maintenance.** — (1) Any city may acquire, in the manner provided for acquiring other property, by purchase or otherwise, hospital grounds, buildings and equipment, and clinics or other health care facilities, and maintain and operate the same and to provide by general ordinance, rules and regulations for governing the same. Cities acting through their respective city councils may convey or lease city hospitals, and the equipment therein, subject to the following conditions:

(a) The entity to which the hospital is to be transferred shall be a nonprofit corporation; (b) No lease term shall exceed ninety-nine (99) years; (c) The governing body of the nonprofit corporation must be composed initially of the incumbent members of the board of hospital trustees, as individuals. The articles of incorporation must provide for a membership of the corporation which is: (i) Broadly representative of the public and includes residents of the city; or (ii) A single nonprofit corporate member having articles of incorporation which provide for a membership of that corporation which is broadly representative of the public and includes residents of the city.

The articles must further provide for the selection of the governing body by the membership of the corporation, or exclusively by a parent corporation which is the corporate member, with voting power, and not by the governing body itself, except to fill a vacancy for the unexpired term. The articles must further provide that no member of the governing body shall serve more than two (2) consecutive three (3) year terms.

(d) The nonprofit corporation must provide care for indigent patients, and receive any person falling sick or maimed within the county.

(e) The transfer agreement must provide for the transfer of patients, staff and employees, and for the continuing administration of any trusts or bequests or maintenance of records pertaining to the existing public hospital.

(f) The transfer or lease agreement shall provide for a transfer or lease price which shall be either of the following: (i) The acceptance of all

assets and assumption of all liabilities; or (ii) Such other price as the city council and the nonprofit corporation may agree.

(2) If any hospital which has been conveyed pursuant to this section ceases to be used as a nonprofit hospital, unless the premises so conveyed are sold and the proceeds used to erect or enlarge another nonprofit hospital for the city, the hospital so conveyed reverts to the ownership of the city. If any hospital which has been leased pursuant to this section ceases to be used as a nonprofit hospital, the lease shall terminate.

**History.**

1967, ch. 429, § 45, p. 1249; am. 1990, ch. 409, § 1, p. 1136; am. 1995, ch. 222, § 1, p. 768; am. 1996, ch. 106, § 1, p. 408; am. 2001, ch. 331, § 9, p. 1161.

**STATUTORY NOTES**

**Cross References.**

Hospital licensing and inspection, § 39-1301 et seq.

Health facilities construction act, § 39-1401 et seq.

Joint city and county hospitals, § 31-3701 et seq.

Joint municipal health facilities authorized, § 39-1416.

Liens in favor of hospitals, § 45-701 et seq.

**Effective Dates.**

Section 2 of S.L. 1990, ch. 409 declared an emergency. Approved April 12, 1990.

Section 2 of S.L. 1995, ch. 222 declared an emergency. Approved March 20, 1995.

**§ 50-306. Public carriers.** — Cities shall have authority to regulate by ordinance and prescribe rules relating to levies [levees], crossings, grounds, facilities for storing freight and goods, and the running of trains and public carriers within the limits of said city.

**History.**

1967, ch. 429, § 30, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Public utilities commission may order improvements, § 61-508.

Railroads in general, Title 62, Idaho Code.

Railroads not to use streets without two-thirds vote by municipal authorities, Idaho **Const., Art. XI, § 11**; § 62-205.

Safety regulations, § 61-515.

**Compiler's Notes.**

The bracketed word “levees” was inserted near the middle of the section by the compiler to correct the enacting legislation.

**CASE NOTES**

Decisions Under Prior Law

Constitutionality.

Extent of protection of ordinance.

Interstate commerce.

Power to regulate.

Railroad annexation.

What constitutes depot.

**Constitutionality.**



A court should have declared an ordinance enacted pursuant to former section governing regulation of railroads, limiting the speed of trains within a city, invalid only if it clearly appeared to be unnecessary and unreasonable for the safety of the public. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

A municipal ordinance enacted pursuant to former section governing regulation of railroads, limiting the speed of trains to 8 miles per hour within a city, was not invalid on the ground of discrimination between railroad and bus lines within the city. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

### **Extent of Protection of Ordinance.**

A nine year old boy, flying a kite on a railroad track within a city's limits, was entitled to the protection of a municipal ordinance, enacted pursuant to former section governing regulation of railroads, limiting the speed of trains to 8 miles per hour within the city's limits. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

### **Interstate Commerce.**

A municipal ordinance enacted under the authority of former section governing regulation of railroads, limiting the speed of trains within a city to 8 miles per hour, was not an unconstitutional interference with interstate commerce, as applied to a train operated in interstate commerce. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

### **Power to Regulate.**

Under the law, the fact that the legislature had given power to the public utilities commission to regulate the speed of railway trains did not prevent a city from doing so in the absence of a showing that the commission had taken action. *Frazier v. Northern Pac. R.R.*, 28 F. Supp. 20 (D. Idaho 1939).

### **Railroad Annexation.**

Former section concerning transportation terminals did not give village power to annex railroad land. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

### **What Constitutes Depot.**

Depot and station grounds included all grounds necessary for switching and making up trains together with sufficient space beyond switches to permit trains to clear and to allow train crews to walk from train to switch without passing over cattle guards. *Ferrell v. Oregon Short Line R.R.*, 44 Idaho 217, 256 P. 104 (1927).

**§ 50-307. License occupations and businesses.** — Cities shall have authority to levy and collect a license fee on any occupation or business within the limits of the city and to regulate the same by ordinance. All such fees shall be uniform in respect to the classes upon which they are imposed.

**History.**

1967, ch. 429, § 31, p. 1249.

**CASE NOTES**

**Cited** *Condie v. Mansor*, 96 Idaho 345, 528 P.2d 907 (1974).

Decisions Under Prior Law Limitation on Power.

Former similar section was not intended to give authority to municipalities to raise any amount of revenue they may decide necessary by imposition of license or per capita tax upon its citizens. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

Municipal corporations could not, in the exercise of their police power, levy and collect a license tax upon individuals or businesses for purposes of revenue. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

**§ 50-308. Maintenance of peace — Licensing and regulating amusements.** — Cities shall have power: to prevent and restrain riots, routs, noises, disturbances or disorderly assemblies; to arrest, regulate, punish, fine or set at work on the streets or elsewhere, vagrants or persons found without visible means of support or legitimate business; license and regulate theaters, halls, concerts, dances, theatrics, circuses, carnivals, exhibitions, amusements and other performances, where an admission fee may or may not be charged.

**History.**

1967, ch. 429, § 32, p. 1249; am. 2013, ch. 223, § 1, p. 524.

**STATUTORY NOTES**

**Cross References.**

Preemption by state of firearms regulation, § 18-3302J.

**Amendments.**

The 2013 amendment, by ch. 223, deleted “to regulate, prevent and punish for the carrying of concealed weapons” following “disorderly assemblies.”

**§ 50-309. Fire department — Fire zones.** — A. Any city, in order to prevent and extinguish fires, shall have the power to erect engine houses, purchase or lease fire engines and all other apparatus to maintain a fire department, to provide water for fire purposes in the city, in such manner as the council may by ordinance prescribe.

B. Cities may prescribe and alter the limits within which no building shall be constructed except of brick, stone or other incombustible material and fire retardant roof and after such limits are established, no special permits shall be given for the erection of buildings of combustible material within said limits, except as provided in [sections 50-1201 through 50-1210, Idaho Code](#).

### **History.**

1967, ch. 429, § 41, p. 1249; am. 1974, ch. 186, § 1, p. 1491.

## **STATUTORY NOTES**

### **Cross References.**

Collective bargaining by municipal firefighters, § 44-1801 et seq.

County firefighting districts, cooperating and reciprocating use of firefighting apparatus, § 31-1430.

Municipalities authorized to extend police and fire protection to county fair, § 22-209.

Nonliability of agency for delay in reporting fire, exception, § 31-1436.

Worker's compensation law applies to firemen, § 72-205.

### **Compiler's Notes.**

Sections 50-1201 through 50-1210, referred to in subsection B, were repealed by S.L. 1975, ch. 188, § 1. For present comparable law, see § 67-6501 et seq.

## **CASE NOTES**

## Decisions Under Prior Law

Authorization for maintenance.

Fire departments.

Fire limits.

Governmental function.

Liability for torts.

### **Authorization for Maintenance.**

Municipal corporations without classification as to class, and cities of the second class, in their corporate capacities were legislatively authorized to prevent and extinguish fires and to acquire all necessary apparatus and equipment, including engine houses, to maintain a fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

### **Fire Departments.**

Municipal corporations without classification as to class, and cities of the second class, in their corporate capacities were legislatively authorized to prevent and extinguish fires and to acquire all necessary apparatus and equipment, including engine houses, to maintain a fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

### **Fire Limits.**

Power to provide for demolition of buildings constructed in violation of an ordinance establishing fire limits within a village was necessarily implied in order to make ordinance effective. *Beem v. Davis*, 31 Idaho 730, 175 P. 959 (1918).

### **Governmental Function.**

A municipal corporation was not liable for negligence in maintaining a pole extending through a hole in the floor from the firemen's quarters to the fire fighting apparatus on the floor below since such was in the exercise of a governmental function. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

Since a municipality in the maintenance of its fire department exercised governmental functions, it had been held generally that a municipality was

not liable for the negligence of officers and servants in connection with its fire department. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

While the legislative grant authorizing municipal corporations to establish fire departments was couched in permissive language, nevertheless a municipal corporation was exercising a governmental function when maintaining and operating a fire department pursuant to legislative authority. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

### **Liability for Torts.**

The overwhelming weight of authority was to the effect that the municipal corporation was not liable for torts arising from a defective condition or negligent construction or operation of its fire fighting facilities and apparatus. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589 (1958).

**§ 50-310. Hazardous materials.** — Cities are empowered: to regulate or prohibit the loading or storage of any material deemed hazardous, or transporting the same over the streets or waters in the city, or within three (3) miles of the limits thereof; to prevent the discharge of firearms, rockets, powder, fireworks or other dangerous, combustible or explosive material in the streets, lots, grounds, alleys or in and about the vicinity of any building and punish violators therefor.

**History.**

1967, ch. 429, § 51, p. 1249.



**§ 50-311. Creation — Vacation of streets — Eminent domain — Reversion of vacated streets.** — Cities are empowered to: create, open, widen or extend any street, avenue, alley or lane, annul, vacate or discontinue the same whenever deemed expedient for the public good; to take private property for such purposes when deemed necessary, or for the purpose of giving right of way or other privileges to railroad companies, or for the purpose of erecting malls or commons; provided, however, that in all cases the city shall make adequate compensation therefor to the person or persons whose property shall be taken or injured thereby. The taking of property shall be as provided in title 7, chapter 7, Idaho Code. The amount of damages resulting from the vacation of any street, avenue, alley or lane shall be determined, under such terms and conditions as may be provided by the city council. Provided further that whenever any street, avenue, alley or lane shall be vacated, the same shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, or as the city council deems in the best interests of the adjoining properties, but the right of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby. In cities of fifty thousand (50,000) population or more in which a dedicated alley has not been used as an alley for a period of fifty (50) years [such alley] shall revert to the owner of the adjacent real estate, one-half (1/2) on each side thereof, by operation of the law, but the existing rights of way, easements and franchise rights of any lot owner or public utility shall not be impaired thereby.

**History.**

1967, ch. 429, § 42, p. 1249; am. 1973, ch. 268, § 1, p. 563.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed words “such alley” were inserted in the last sentence by the compiler to correct the enacting legislation.

**Effective Dates.**

Section 2 of S.L. 1973, ch. 268 provided the act should take effect on and after July 1, 1973, and should be effective with respect to dedicated alleys which had heretofore been unused as alleys.

## CASE NOTES

Alley.

Construction with other law.

Legislative intent.

Ordinance.

Reversion.

Alley.

The legislature has provided this section as the method for municipal corporations to follow when vacating an alley; this section does not empower a municipal corporation to impose any conditions upon the vacation of an alley except for the proviso regarding impairment of the right of way, easements, and franchise rights of lot owners and public utilities. *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

Where the evidence did not rebut the presumption that one-half of a vacated alley was conveyed with a first conveyance, even though the alley was not expressly mentioned, the decision of the district judge in favor of the grantee of that conveyance was affirmed. *Carney v. Heinson*, 133 Idaho 275, 985 P.2d 1137 (1999).

There is no substantive limitation on the power of a city to vacate under this provision, since the language merely indicates that reversion of ownership to adjacent landowners does not affect the rights of those who hold existing rights-of-way or easements independent of the public right-of-way that is vacated. *Allison v. City of Coeur d'Alene*, 133 Idaho 560, 990 P.2d 141 (1999).

A lot owner whose property has been taken pursuant to this provision may seek compensation or challenge a city's procedures or findings, but may not challenge the validity of the city's actions solely because his rights

have been impaired. *Allison v. City of Coeur d'Alene*, 133 Idaho 560, 990 P.2d 141 (1999).

### **Construction With Other Law.**

There is a clear distinction between a city vacating a city street and a city exchanging a portion of a city street for other property. The vacation of a city street is governed by this section and, if the street is part of a plat or subdivided tract, by § 50-1321. The exchange of city real property for other property is governed by § 50-1403. Moreover, under Idaho law, a city has no authority to convey a portion of a city street. *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

### **Legislative Intent.**

The primary intent of this section is to settle ownership of property after vacation and provide that a newly vacated parcel becomes part of the adjoining property rather than becoming an independent parcel owned by the landowner. *Carney v. Heinson*, 133 Idaho 275, 985 P.2d 1137 (1999).

### **Ordinance.**

A city ordinance that is in conflict with a state law of general application is invalid; this section, which applies to all municipal corporations in the State of Idaho and is an act of the state legislature, is clearly a state law of general application. It provides the method for municipal corporations to follow in vacating alleys. The two conditions that city imposed upon vacation of the alley, as well as the right of reversion should a certificate of occupancy not be issued, were not expressly granted powers, fairly implied powers from the clear language of this section, nor powers essential to the vacation of the alley; the only condition that this section allows upon a finding of expedience for the public good is that the vacation cannot impair “the right of way, easements and franchise rights of any lot owner or public utility.” Thus, the two conditions, as well as the right of reversion, were ultra vires acts by city because they conflicted with this section. *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

### **Reversion.**

Reversion provision only applies to an alley, not a road. *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d 1008 (2005).

**Cited** Boise City ex rel. Amyx v. Fails, 94 Idaho 840, 499 P.2d 326 (1972); Clark v. Olsen, 110 Idaho 323, 715 P.2d 993 (1986).

### Decisions Under Prior Law

Appraisal of damages.

Bridges.

Construction.

Construction with eminent domain law.

Damages for vacation.

Discretion.

Discretionary power.

Discrimination.

Effect of recording plat.

Irrigation districts.

Jurisdiction exclusive.

Liability for negligence.

Procedure.

Road levy.

Sewers.

Vacation for private uses.

When conveyance unnecessary.

### **Appraisal of Damages.**

Damages to be appraised under former similar section were damages and injuries resulting from vacation of a street and taking of same either by city for its exclusive use, or granting of right to take same to a railway company or any other company making exclusive use of same. Under constitution and statute, a city had no right to condemn or vacate a street for private use of a railway company until full compensation had been made for all injury

which would result from such taking. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912).

### **Bridges.**

Counties were not required to construct and maintain bridges exceeding sixty feet in length, at expense of county, over streams crossing highway within limits of municipal corporations. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

Under existing statutes, city council or village trustees of incorporated cities and towns had exclusive control of streets and highways within their corporate limits, which includes full power to construct bridges and maintain same. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

### **Construction.**

Former statutes clearly conferred full power and authority upon mayor and common council of all cities within state to enact ordinances providing for paving and improvement of streets and buildings of storm sewers and drains and for construction of sidewalks. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Terms “special assessments,” “special tax,” and “taxes” were used interchangeably. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

### **Construction With Eminent Domain Law.**

Neither former similar section nor former section concerning eminent domain required any notice and left all matters to an ordinance, and ordinance was required to comply with provisions of constitution and statutes of this state in exercising right of eminent domain. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912); *Thomas v. Boise City*, 25 Idaho 522, 138 P. 1110 (1914).

### **Damages for Vacation.**

One whose property did not abut on the part of the street so vacated could not maintain an action to enjoin the enforcement of the ordinance, though he, in common with others, may have been inconvenienced by such vacation. *Canady v. Coeur d’Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

Where the authorities, by vacating a street, cut off the property owner's ingress to or egress from his property, they caused a loss or damage to him not common to the rest of the community and he had a right of action for such injury. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

A municipal corporation granting a right of way in its governmental capacity was not liable for damages occasioned by the grantee's use of the easement. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912).

### **Discretion.**

Right to vacate a street or a part thereof was largely in discretion of body possessing that power, and such body may determine as to public convenience and necessity of such discontinuance, and where there had been no glaring informality or illegality in proceedings, its judgment should not have been disturbed. *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911).

### **Discretionary Power.**

Municipality was vested with certain discretion in respect to grading and preparing full width of street so as to render same fit for travel. *Smith v. City of Rexburg*, 24 Idaho 176, 132 P. 1153 (1913).

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

### **Discrimination.**

Paving assessment against abutting property was held not discriminatory because city paved street in front of other property abutting on line of improvement at its own expense. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

### **Effect of Recording Plat.**

Effect of recording plat was to vest in city determinable fee for public use of surface of street. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

## **Irrigation Districts.**

In exercising its right to grade its streets, city could, if necessary, remove ditches and require their reconstruction by pipelines laid beneath surface by company possessing franchise and easement for such ditches. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).

Former sections concerning street improvements and bond issuance gave cities power to destroy an irrigation ditch where necessary in the reconstruction of roadbeds and grades. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).

Power conferred upon irrigation districts to enter streets and alleys of municipalities did not repeal or interfere with power of such municipalities to exercise control of their streets and alleys and to regulate manner of their use, and to direct manner in which such irrigation district shall construct and maintain its ditches, canals, and laterals within such municipalities. *Nampa v. Nampa & Meridian Irrigation Dist.*, 23 Idaho 422, 131 P. 8, appeal dismissed, 238 U.S. 643, 35 S. Ct. 602, 59 L. Ed. 1502 (1913).

In suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

## **Jurisdiction Exclusive.**

Right of towns and villages to repair highways, streets and alleys was exclusive, and county commissioners could not authorize a road overseer to go within limits of any organized town or village to repair, or interfere with, its streets or alleys. *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894).

## **Liability for Negligence.**

Cities and villages incorporated under general laws of state were liable in damages for a negligent discharge of duty of keeping streets and alleys in a



reasonably safe condition for use by travelers in usual modes. *Miller v. Mullan*, 17 Idaho 28, 104 P. 660 (1909).

If abutting property was injured by a city, while it was lawfully exercising its power in grading streets and in reconstructing the roadbed, city was not answerable in damages, in absence of a statute expressly imposing such liability. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911); *Crane v. Harrison*, 40 Idaho 229, 232 P. 578 (1925), overruled on other grounds, *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

City officials must have understood that if they neglected to keep streets and alleys in proper repair, and injury resulted from such negligence, city was liable for damages, and the officer who neglected his duty in making proper inspection of streets and sidewalks, by reason whereof personal injury resulted, was liable to city. *Powers v. Boise City*, 22 Idaho 286, 125 P. 194 (1912).

City council had to keep streets, alleys, bridges, etc., of city open, in repair and free from nuisance, and could require persons to remove encroachments on same at expense of such persons, and were liable in damages for injuries resulting from neglect of such duty, as to obstructions on and above the streets, *etc.* *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

To charge city with liability for damages, it was not necessary that it had notice of a nuisance. City was charged with the duty of keeping streets and sidewalks free for use and passage without danger. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

Incorporated cities and village were liable in damages for negligence in failing to maintain streets and alleys in reasonably safe conditions for travel. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

### **Procedure.**

Court should decide as matter of law that use for which condemnation was sought was public use; after that, question of extent of enterprise and necessity for taking should have been in large measure left to judgment and discretion of public agency seeking to make condemnation. *Washington*



Water Power Co. v. Waters, 19 Idaho 595, 115 P. 682 (1911); Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925).

After additional territory had been annexed, city had authority to condemn parcels for street improvements. Boise City v. Boise City Dev. Co., 41 Idaho 294, 238 P. 1006 (1925).

### **Road Levy.**

Levy authorized under former section governing street improvements to be made by municipality was in addition to road levy authorized to be made by the county commissioners under § 40-501, a portion of which was apportioned to city. Hettinger v. Good Rd. Dist. No. 1, 19 Idaho 313, 113 P. 721 (1911); Shoshone Hwy. Dist. v. Anderson, 22 Idaho 109, 125 P. 219 (1912).

### **Sewers.**

Cities and villages had power to construct all necessary and incidental works for a complete sewerage system. Veatch v. Gibson, 29 Idaho 609, 160 P. 1112 (1916).

### **Vacation for Private Uses.**

Under former similar section it was immaterial that vacation was made for purpose of devoting vacated street or alley to private uses. Canady v. Coeur d'Alene Lumber Co., 21 Idaho 77, 120 P. 830 (1911).

Where portion of street was vacated in recorded plat, city could not have conveyed fee therein to owner of abutting land not in plat. Mochel v. Cleveland, 51 Idaho 468, 5 P.2d 549 (1930).

### **When Conveyance Unnecessary.**

Where a street was vacated in interest of a company that owns all lands on both sides of street, a conveyance to it was unnecessary; vacated street reverted to abutting property owner. Canady v. Coeur d'Alene Lumber Co., 21 Idaho 77, 120 P. 830 (1911).

## **RESEARCH REFERENCES**

**ALR.** — Authorization, prohibition or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose.

14 A.L.R.3d 896.

Estoppel of municipality as to encroachments upon public streets. 44 A.L.R.3d 257.

Widening of city street as local improvement justifying special assessment of adjacent property. 46 A.L.R.3d 127.

Authority of zoning commission to impose, as condition of allowance of special zoning exception, permit, or variance, requirements as to highway and traffic changes. 49 A.L.R.3d 492.

**§ 50-312. Improvement of streets — Special levy.** — Cities may levy and collect a special tax upon all of the taxable property within the city limits to establish, lay out, alter, open any streets or alleys and improve, repair, light, grade, sprinkle, flush, gravel, oil, or drain the same and remove any and all obstructions therefrom; establish grades and construct bridges, crosswalks, culverts, drainage systems thereon and repair and maintain the same; cause to be planted, set out and cultivated, shade trees along the lines thereof or therein; extend its street lighting system to a maximum distance of two (2) miles outside its corporate limits, along approaches to its street system, subject to the approval of the agency having legal jurisdiction of the highway, road or street involved; provided, however, that no public utility, city[,], quasi-municipal corporation or cooperative association serving electric energy to such street lighting system outside the corporate limits of such city shall, by so serving such electric energy, acquire any rights to serve any other property or any present or future consumer, by virtue of, or in violation of, any provisions of title 61, chapter 3, Idaho Code.

**History.**

1967, ch. 429, § 44, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed comma near the end of the section was inserted by the compiler to correct the enacting legislation.

**CASE NOTES**

Decisions Under Prior Law [Assessments against municipal property.](#)

[Construction.](#)

[Validity and construction.](#)

[Assessments Against Municipal Property.](#)

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

### **Construction.**

The terms “special assessments,” “special tax,” and “taxes” were used interchangeably. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

### **Validity and Construction.**

Former similar section, where the necessity to repair the streets exists, violated no constitutional right of the owners of property assessed, as long as the benefits continued respectively to equal the individual assessments. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

**§ 50-313. Public ways — Supervision.** — The city councils of cities shall have the care, supervision, and control of all public highways and bridges within the corporate limits, and shall cause them to be kept open and in repair and free from nuisances. Where any highway within the corporate limits has been designated a part of the state highway system, the provisions of section 40-502, Idaho Code, shall be applicable.

**History.**

1967, ch. 429, § 47, p. 1249; am. 1985, ch. 253, § 8, p. 586.

**CASE NOTES**

**Liability for injuries.**

**Regulation of traffic.**

**Liability for Injuries.**

In an action by a motorist, who sustained personal injuries in an automobile accident at an intersection, to recover against the city on the theory that it was negligent in its construction and maintenance of a stop sign which was not seen by the motorist before the accident, summary judgment for the city was precluded by issues of fact as to whether the sign was obscured by foliage, whether the city had actual or constructive notice of obscured visibility of the sign, and whether the poorly constructed sign was the proximate cause of the accident. *Smith v. Preston*, 97 Idaho 295, 543 P.2d 848 (1975).

**Regulation of Traffic.**

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, did not attempt to control traffic or to control roadways, the ordinance was not in conflict with this section which provides cities with authority to control traffic and roadways within their corporate limits. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

Decisions Under Prior Law

Agent of state.

Barrier at end of street.

Barriers.

Bridges.

Construction.

Control.

Dead-end streets.

Ice and snow.

Liability for injuries.

Pipes of water company.

Private driveways.

Proprietary functions.

Reasonable care.

Regulation of traffic.

Right to irrigation ditch.

Right to taxi stand.

Signs over sidewalks.

Validity of assessments.

### **Agent of State.**

Municipality in exercising its power over its streets and alleys acted as agent of the state. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

### **Barrier at End of Street.**

Maintenance of a street with its terminus upon the bank of a river with a barrier erected thereat was not a nuisance for there was no defect which obstructed free passage or use of the street in the customary manner. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

### **Barriers.**

Former similar section imposed a duty upon a city to keep the streets within its limits in a reasonably safe condition for use by travelers in the usual modes, and, arising out of this duty and as a corollary thereof, the duty to erect and maintain barriers or warning devices where necessary to make the street reasonably safe for travelers using ordinary care and at such places as would be unsafe for usual and ordinary travel without such barriers or warning devices. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

There was no duty resting upon a municipality to erect barriers sufficient to withstand the impact of an auto out of control or recklessly driven. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

### **Bridges.**

Bridge connecting two streets within corporate limits of a village, was under exclusive control of village and village, was bound to keep it in repair and safe for accommodation of traveling public, and was liable for any injury resulting to a traveler from its neglect of duty in that respect. *Village of Sand Point v. Doyle*, 11 Idaho 642, 83 P. 598 (1905).

### **Construction.**

Board of county commissioners had not the control of the roads and bridges within corporate limits of a city or village, and they were not required, under law, to construct and maintain bridges exceeding sixty feet in length at expense of county over streams crossing highways within such corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

County authorities could not be compelled by mandamus to construct or repair bridge in city but could do so. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86 (1914).

The legislature had by former similar section delegated to the civil municipalities of this state the authority, subject to constitutional limitations, to police the streets of the municipalities and to regulate traffic thereon. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

### **Control.**

Council or trustees had exclusive control of streets, including bridges, within corporate limits. *City of Kellogg v. McRae*, 26 Idaho 73, 141 P. 86

(1914).

### **Dead-End Streets.**

It was not unlawful for the city to maintain a street with its terminus on the bank of a river; dead-end streets were not unlawful. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

### **Ice and Snow.**

Where ice and snow have not accumulated upon a sidewalk so as to create an obstruction, mere slipperiness and unevenness caused by tramping, thawing, and freezing, in case of an accident, would not render municipality liable. *Wilson v. City of Idaho Falls*, 17 Idaho 425, 105 P. 1057 (1909).

### **Liability for Injuries.**

Municipalities had exclusive control over streets, etc., within their limits and were liable to a traveler on such streets who was injured by a negligent discharge by municipality of duties imposed by former similar section. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903); *Eaton v. City of Weiser*, 12 Idaho 544, 86 P. 541 (1906).

Municipalities had complete and exclusive control of the streets and alleys, and where city permitted and participated in placing a tank, containing explosive gas, in an alley, and it was reasonably foreseeable that damage would result from the tank, the city was liable for damages sustained as a result of the injury to travelers on the streets as well as to property adjacent to the tank. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Complaint for personal injuries arising out of dead-end street accident, which alleged that injuries were proximately caused by the failure of the councilmen to maintain warning signs, stated a cause of action against the councilmen. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

Mayor of a city of a second class was not individually liable for maintenance of street in a reasonably safe condition and could not be sued individually for damages for injuries sustained as the result of alleged failure of city to maintain warning sign of a dead-end street. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).



Plaintiff who sustained personal injuries as the result of a dead-end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. *Lemmon v. Clayton*, 128 F. Supp. 771 (D. Idaho 1955).

### **Pipes of Water Company.**

Pipes of water company lying beneath the surface did not constitute a nuisance and water company could either have removed them or not have removed them, and if the company elected to remove the pipes, it was entitled to a period of 90 days in which to remove the pipes. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to regulation by the commission, since municipalities retain the right to control and maintain its streets and alleys. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

### **Private Driveways.**

Under its exercise of the police power and authority over the streets and in furtherance of the public good, the common council, for sufficient reason, could eliminate curb cuts and driveways without incurring liability to the abutting owner for the resulting injury. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

### **Proprietary Functions.**

Granting of permits to place structures in, under, on, or about the streets and alleys was a proprietary and not governmental function. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

Municipalities, in the exercise of proprietary functions, were under the same obligations and liabilities as a private owner, and the latter was liable to those outside his premises though not presently or prospectively using the facilities. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

### **Reasonable Care.**

Former similar section required only that a city exercise reasonable and ordinary care to keep its streets in a reasonably safe condition for ordinary travel. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

### **Regulation of Traffic.**

When a street was acquired, either by dedication or condemnation, and opened for traffic, the city had the power and authority to police the same and regulate the traffic thereon. *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

City in the exercise of its police power over, and its control of, streets had the right to regulate the use thereof by all vehicles, commercial, and noncommercial, and this power included the right to designate and regulate the stands of taxicabs. *Yellow Cab Taxi Serv. v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

The city had the supervision and control of the public highways and streets within its limits. *Yellow Cab Taxi Serv. v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

### **Right to Irrigation Ditch.**

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers, and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

### **Right to Taxi Stand.**

Taxicab service operator who alleged occupation of a taxicab stand for a 16-year period was not entitled to have his rights to the use of the street quieted in him and such right protected by injunction. *Yellow Cab Taxi Serv. v. City of Twin Falls*, 68 Idaho 145, 190 P.2d 681 (1948).

### **Signs Over Sidewalks.**

Municipality was liable in first instance for permitting private persons negligently to place signs over sidewalk or streets and persons who placed

such obstructions over sidewalk were liable to city for whatever damages it had to pay for such unlawful acts. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

### **Validity of Assessments.**

Assessments made under authority granted in former section governing street improvements violated no constitutional rights of the owners of the property so assessed, as long as the benefits continue respectively to equal the individual assessments. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

**§ 50-314. Streets and public places — Regulations.** — Cities shall have power to: control and limit the traffic on streets, avenues and public places; regulate and control all encroachments upon and into all sidewalks, streets, avenues, and alleys in said city; remove all obstructions from the sidewalks, curbs, gutters and crosswalks at the expense of the person placing them there.

**History.**

1967, ch. 429, § 49, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Disposition of funds derived from regulation of parking on city streets, § 50-1015A.

**CASE NOTES**

Installation of stop sign.

Regulation of traffic.

**Installation of Stop Sign.**

Neither the Idaho statutes nor the Uniform Manual of Traffic Control Devices required a traffic engineering study by a city prior to installation of a stop sign. *Lisher v. City of Potlatch*, 101 Idaho 343, 612 P.2d 1190 (1980).

**Regulation of Traffic.**

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, did not attempt to control traffic or to control roadways, the ordinance was not in conflict with this section which provides cities with authority to control traffic and roadways within their corporate limits. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

City has authority to limit the traffic on a public road to bicycles and pedestrians. *Christensen v. City of Pocatello*, 142 Idaho 132, 124 P.3d 1008 (2005).

**Cited** *City of Nampa v. Swayne*, 97 Idaho 530, 547 P.2d 1135 (1976).

#### Decisions Under Prior Law

Irrigation ditch.

Liability for condition of streets.

Liability for permitting encroachments.

Obstruction in street.

Private driveways.

Regulation of filling stations.

Structures overhanging street.

#### **Irrigation Ditch.**

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers, and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

#### **Liability for Condition of Streets.**

Cities and villages which were granted exclusive control over their streets, avenues, lanes, and alleys were liable in damages for negligent discharge of the duty of keeping such streets and alleys in a reasonably safe condition for use by travelers in the usual modes. *Carson v. City of Genesee*, 9 Idaho 244, 74 P. 862 (1903).

#### **Liability for Permitting Encroachments.**

The fact that city did not by ordinance regulate or prohibit encroachments did not relieve it from liability for negligently permitting such encroachments. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

### **Obstruction in Street.**

Holder of permit to install an obstruction in street acquired no property or contractual right by reason of such permit, and, whenever city authorities revoked such permit, holder had no alternative. *Keyser v. City of Boise*, 30 Idaho 440, 165 P. 1121 (1917).

### **Private Driveways.**

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

### **Regulation of Filling Stations.**

Municipal corporations may adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

### **Structures Overhanging Street.**

Municipality was liable for damages for injuries resulting from neglect of its duty to keep its streets in reasonably safe condition for travel. Rule extended not only to surface of street or sidewalk but also to structures over them. *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913).

**§ 50-315. Rehabilitation improvements.** — Cities may provide for the repairing, rebuilding and relaying of pavement, curb, gutter, sewer or other improvements, the procedure and manner of payment to be the same as provided by law for making such improvements in the first instance.

**History.**

1967, ch. 429, § 53, p. 1249.

**§ 50-316. Sidewalks — General regulations.** — Cities may provide by general ordinance for the construction, repair or removal of sidewalks which are deemed by the council to be dangerous and unsafe, and for the replacing thereof, assess the cost as provided in section 50-1008[, Idaho Code,] to the property in front of which the same shall be constructed, repaired or laid.

**History.**

1967, ch. 429, § 56, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Local improvement assessments, § 50-1701 et seq.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

Decisions Under Prior Law [Construction contracts.](#)

[Private driveways.](#)

**[Construction Contracts.](#)**

Former similar section authorized a city to make contracts for the construction of sidewalks. [Byrns v. City of Moscow](#), 21 Idaho 398, 121 P. 1034 (1912).

**[Private Driveways.](#)**

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. [Johnston v. Boise City](#), 87 Idaho 44, 390 P.2d 291 (1964).



**§ 50-317. Removal of snow, ice, rubbish and weeds.** — Cities are empowered to cause all sidewalks and alleys to be cleared of snow, ice and rubbish, and the cutting and removal of trees, weeds and grass, and the removal of rubbish upon and from all private property within the city and the parking within the curbing abutting same, and to assess the cost thereof against the private property so cleared, and against the property abutting the parking, sidewalks and alleys so cleaned. Such assessment shall be collected as provided in section 50-1008[, Idaho Code].

**History.**

1967, ch. 429, § 57, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Cited** *Roell v. Boise City*, 130 Idaho 199, 938 P.2d 1237 (1997).

Decisions Under Prior Law *Filling stations*.

*Private driveways*.

**Filling Stations.**

Municipal corporations could adopt ordinances regulating establishment of filling stations. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

**Private Driveways.**

The closure of designated curb cuts and reconstruction of the curb ordered by the common council of Boise City, on the ground that the curb cuts in question were not being used and were unnecessary, was sustained

by the evidence and disclosed no unreasonable exercise of discretion on the part of the city. [Johnston v. Boise City, 87 Idaho 44, 390 P.2d 291 \(1964\)](#).

## **RESEARCH REFERENCES**

**ALR.** — Salting for snow removal as taking or damaging abutting property for eminent domain purposes. [64 A.L.R.3d 1239](#).

**§ 50-318. Identification of streets and houses.** — Cities may provide by ordinance for the naming of streets and avenues and the numbering of houses adjacent thereto.

**History.**

1967, ch. 429, § 54, p. 1249.

**§ 50-319. Animals at large — Regulation.** — The mayor and council of each city shall have authority: to regulate the running at large of domesticated animals; to cause such as may be running at large to be impounded and sold to discharge the penalties and costs of impounding, keeping and sale; to impose a license tax upon the owners and harborers and enforce the same by appropriate penalties; to authorize the destruction or sale of any domesticated animal, the owner or harborer of which shall neglect or refuse to pay such license tax; to provide for the erection of all needful pens and pounds within or without the city limits; and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

**History.**

1967, ch. 429, § 55, p. 1249.

**STATUTORY NOTES**

**Cross References.**

County dog license tax, § 25-2801.

**§ 50-320. Cemeteries.** — All cities shall have the following powers in regard to cemeteries:

A. Acquisition. — Purchase, hold and pay for, in the manner herein provided, lands not exceeding eighty (80) acres in one (1) body outside of the corporate limits, and all necessary grounds including any lands as have heretofore been laid out or platted and offered for sale for cemetery purposes, excepting such portions thereof as have been heretofore sold for cemetery purposes, hospital grounds or waterworks. For the purpose of purchasing such lands and maintaining the same, any city may levy a tax of not more than four hundredths percent (.04%) of the market value for assessment purposes in any one (1) year on all taxable property within the limits of the city, and exercise the right of eminent domain under the provisions of chapter 7 of title 7, Idaho Code, in the taking or securing of such grounds and property.

B. Improvement. — Survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds and streets owned by the city leading thereto; construct walks and protect ornamental trees therein and provide for paying the costs thereof.

C. Conveyance of lots. — Convey cemetery lots by certificates signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots, described therein by number as laid down on such map or plat. Such certificates shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to said lots for the sole purpose of interment, under the regulations of the city council. Such certificates shall be entitled to be recorded in the office of the county recorder of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

D. Regulation. — Limit the number of cemetery lots which may be owned by any person; prescribe rules for inclosing, adorning, and erecting monuments and tombstones on cemetery lots; prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test

shall be made as to the ownership of lots, the burial therein or the ornamentation of graves or of such lots.

E. Penalties. — Pass rules and ordinances imposing penalties and fines not exceeding the amount permissible in probate and justice courts, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereto and trespassers therein; and the officials of the city shall have as full jurisdiction and power in the enforcing of such rules as though they related to the corporation itself.

### **History.**

1967, ch. 429, § 39, p. 1249; am. 1995, ch. 82, § 23, p. 218.

## **STATUTORY NOTES**

### **Cross References.**

Cemetery maintenance districts, § 27-101 et seq.

### **Compiler's Notes.**

Probate and justice courts, referred to in subsection E, no longer exist. Their functions have been assumed by the district and magistrate courts, pursuant to S.L. 1969, Chapter 100. See § 1-103.

## **CASE NOTES**

**Cited** [Alliance v. City of Idaho Falls, 742 F.3d 1100 \(9th Cir. 2013\).](#)

Decisions Under Prior Law

[Establishment and maintenance.](#)

[Taxation.](#)

### **Establishment and Maintenance.**

A cemetery may be established and conducted for profit, and the establishment and maintenance thereof by the public has also been authorized by the legislature. [Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n, 80 Idaho 206, 327 P.2d 766 \(1958\).](#)

[Taxation.](#)

None of the property of the corporation involved, neither the lots sold for burial purposes nor the unplatted acreage, was exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of former § 63-105M (now § 63-602F) so as to entitle it to be exempted from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

## RESEARCH REFERENCES

**ALR.** — Zoning regulations in relation to cemeteries. 96 A.L.R.3d 921.

**§ 50-321. Aviation facilities — Acquisition, operation and maintenance.** — Cities are hereby empowered: to acquire by purchase, gift, lease, sublease, or otherwise hold and take over such lands as the city council may deem necessary within or without the corporate limits whether within or without the county in which said city is located; do all things necessary in cooperation with the United States government in adapting any such lands so acquired to national defense purposes; and for the purpose of maintaining aviation facilities, to lease for aviation purposes, or any purposes connected therewith and incident thereto, all or any part of such land or lands, under such regulations and upon such terms and conditions as shall be established by the city council or otherwise established by law; to construct, operate and maintain, consistent with such regulations as may now exist or may hereafter be established by law, hangars, buildings and equipment necessary or convenient to the maintenance and operation of aviation facilities; to survey, plat, map, grade, ornament and otherwise improve such land, appurtenances, approaches, and avenues leading to or adjacent thereto; to provide for all costs and expenses incident or necessary to the exercise of the foregoing powers or the attainment of the foregoing objects out of the general fund of said city or in its discretion by special levy, in an amount not to exceed six hundredths percent (.06%) of the market value for assessment purposes in any one (1) year on all the taxable property within such city or by the issuance of bonds as provided by sections 50-1001 through 50-1042, Idaho Code.

**History.**

1967, ch. 429, § 40, p. 1249; am. 1995, ch. 82, § 24, p. 218.

**STATUTORY NOTES**

**Cross References.**

Aeronautics and aeronautic facilities, municipalities to cooperate with transportation department in development, § 21-104.

Aeronautics laws, duty to aid in enforcement of, § 21-119.



Airports as part of national defense system, counties and municipalities may share in cost, §§ 21-403 to 21-406.

Airports, counties and municipalities authorized to cooperate, § 21-401 et seq.

Airport Zoning Act, § 21-501 et seq.

Airport zoning authorized, § 21-106.

Aviation fields, airports, hangars and other air navigation facilities authority to acquire or construct, bond issues authorized, § 21-401.

Municipal airports, § 21-105.

Regional airports, § 21-801 et seq.

Tax levy authorized, § 21-404.

## CASE NOTES

**In general.**

**Firefighters.**

**In General.**

Where repair and improvement of airport facility is essential for proper growth and development of area, funds expended for repair and improvement of airport facility are ordinary and necessary expenses within the proviso of Idaho Const., Art. VIII, § 3. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

**Firefighters.**

The contract the city of Boise made with the Idaho national guard (IDANG) to provide air rescue fire fighting (ARFF) services at the Boise municipal airport did not violate the Idaho constitution or the Idaho civil service act; however, the firefighters were entitled to collectively bargain in anticipation of the city's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and by refusing to negotiate with the union, the city violated the collective bargaining act, § 44-701 et seq. *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

**Cited** Tomich v. City of Pocatello, 127 Idaho 394, 901 P.2d 501 (1995); City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006), overruled on other grounds, City of Challis v. Consent of the Governed Caucus, 159 Idaho 398, 361 P.3d 485 (2015).

**§ 50-322. Transit systems.** — Any city may, in the manner provided for acquiring other property, purchase, lease, or otherwise procure transit systems and provide by general ordinance for rules and regulations governing the maintenance and operation of the same.

**History.**

1967, ch. 429, § 46, p. 1249.

**§ 50-323. Domestic water systems.** — Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term “domestic water systems” and “domestic water” includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

**History.**

1967, ch. 429, § 20, p. 1249; am. 1979, ch. 304, § 1, p. 825.

**STATUTORY NOTES**

**Cross References.**

Bond issues for water plants, § 50-1020.

**CASE NOTES**

Franchise authority.

Increase of rates.

Liability for charges incurred by tenants.

**Franchise Authority.**

It is undisputed that municipal corporations have the power to operate their own utility systems and provide water, power, light, gas and other utility services within the city limits, and the constitutional and statutory grant of franchise authority to the cities in this respect is not nullified or altered by § 40-1406. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

**Increase of Rates.**

In the absence of any statutory or constitutional provision expressly or implicitly requiring that a municipality act by ordinance in the establishment and amendment of rates charged for extending the city's water system, it was proper for a city to adopt the rate increase by resolution. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

### **Liability for Charges Incurred by Tenants.**

A city did not have implied power to collect from a property owner for charges incurred by tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

**Cited** *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

## **OPINIONS OF ATTORNEY GENERAL**

### **Ordinary and Necessary.**

Under current law as expressed in *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870 (1984), and *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970), proposed improvements to the Cascade water system would be ordinary and necessary expenses; therefore, art. 8, § 3, Idaho Const., would not require voter ratification of the debt. OAG 88-3.

**§ 50-324. Cities authorized to jointly purchase or lease, maintain or operate a joint water system.** — All cities of this state are empowered by ordinance to negotiate for and purchase or lease, and to maintain and operate, in cooperation with adjoining cities of states bordering this state, the out of state water distribution system, plant and equipment of privately owned utilities used for the purpose of supplying water to the purchasing or leasing cities from an out of state source; provided, the legislature of the state in which such water distribution system, plant, equipment and supply are located, by enabling legislation, authorizes its cities to join in such purchase or lease, maintenance and operation. The city council of the cities acting jointly under this section shall have authority, by mutual agreement, to exercise jointly all powers granted to each individual city in the purchase or lease, maintenance and operation of a water supply system.

**History.**

1967, ch. 429, § 21, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Joint service functions, §§ 67-2326 — 67-2333.

Joint water, power, or sewerage services, §§ 50-1022 — 50-1025.

**CASE NOTES**

**Decisions Under Prior Law Proprietary Capacity.**

A municipal corporation, in the ownership, maintenance and operation of a municipal water system supplying water to its inhabitants for pay, acted in a proprietary, not in a governmental, capacity. *Gilbert v. Bancroft*, 80 Idaho 186, 327 P.2d 378 (1958).

**§ 50-325. Power plants — Power distribution.** — (1) Cities shall have authority: to acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city, and to sell excess power subject to the provisions of section 50-327, Idaho Code.

(2) Any consumer of a municipal electric system may apply to the district court of the county where the consumer's service entrance is located for a determination that the municipality's charges for electric service to that consumer are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the municipality to alter or amend such rate in conformance with the determination of the court.

**History.**

1967, ch. 429, § 22, p. 1249; am. 2001, ch. 29, § 15, p. 35.

**STATUTORY NOTES**

**Cross References.**

Bond issues for light and power plants, § 50-1020.

**Effective Dates.**

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

**CASE NOTES**

Franchise authority.

Liability for charges incurred by tenants.

Purchase of project capability.

**Franchise Authority.**

It is undisputed that municipal corporations have the power to operate their own utility systems and provide water, power, light, gas and other utility services within the city limits, and the constitutional and statutory grant of franchise authority to the cities in this respect is not nullified or altered by § 40-1406. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

### **Liability for Charges Incurred by Tenants.**

A city did not have implied power to collect from a property owner for charges incurred by tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

### **Purchase of Project Capability.**

There is no statutory authorization for the purchase of “project capability” where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired; the municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power, but is underwriting another entity’s indebtedness in return for merely the possibility of electricity. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Agreement between cities and power company by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects, did not come within ordinary and necessary proviso of *Const., Art. VIII, § 3* and consequently was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the *Constitution*. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

## **OPINIONS OF ATTORNEY GENERAL**

### **Limitation.**



The legislature has not given Idaho counties authority to produce and sell electric power. Therefore, Idaho counties lack authority to enter into an agreement with counties of other states to develop a joint water project for the production and sale of hydroelectric power. OAG 89-1.

**§ 50-326. Water, light, power and gas plants — Leasing — Selling — Procedure.** — Whenever any city in this state shall own its own water plant, water system, electric power plant or electric light and power transmission and electric distribution system or natural gas distribution system, the city council of such city may lease and sell such systems, provided, however, that before doing so, the question of leasing or selling such property shall be submitted to the qualified electors who pay taxes on real property within said city, at a special election held for that purpose, and if a majority of the votes cast at such election are in favor of leasing or selling such property, the city council may then lease or sell the same; but in case the majority of the votes cast at such special election shall be against the leasing or selling of such property, the city council shall have no power to lease or sell the same. The election to be called shall be held only after notice thereof has been published at least once a week for two (2) consecutive weeks, before the election, in the official newspaper of said city. Notice of such special election shall also be posted by the city clerk in three (3) public places in such city, at least ten (10) days before such special election. A city council may enter into agreements pursuant to this section to lease with the option to sell any plant or system described in this section. A city council may only terminate such lease/option to sell agreements during the term of the agreement for default by the entity leasing such plant or system. Such lease/option to sell agreements are subject to the voter approval requirements of this section.

**History.**

1967, ch. 429, § 23, p. 1249; am. 1999, ch. 216, § 1, p. 576.

**§ 50-327. Sale of excess power.** — Any city of the state of Idaho owning or controlling a power plant may sell its excess power to persons and corporations for any lawful purpose. The term “excess power” means all electricity not needed by the city or the inhabitants thereof. All charges or rates for the excess power shall be fixed by ordinance and shall be uniform and fair to all consumers and no discrimination shall be allowed or practiced by any city; provided, that any city which may desire to take advantage of the provisions of this section may only contract with consumers as to excess power. Under this section all contracts with consumers are to be drafted subject to the foregoing provision and no contract shall be for a period longer than five (5) years.

**History.**

1967, ch. 429, § 24, p. 1249.

**CASE NOTES**

**Cited** Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983).

**§ 50-328. Utility transmission systems — Regulations.** — All cities shall have power to permit, authorize, provide for and regulate the erection, maintenance and removal of utility transmission systems, and the laying and use of underground conduits or subways for the same in, under, upon or over the streets, alleys, public parks and public places of said city; and in, under, over and upon any lands owned or under the control of such city, whether they may be within or without the city limits.

**History.**

1967, ch. 429, § 50, p. 1249.

**CASE NOTES**

**Authority over All Lands.**

This section, which expressly addresses the regulation of utility transmission systems, gives a city the authority over all lands, not solely the public streets, which are owned or under control of such city. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

**OPINIONS OF ATTORNEY GENERAL**

**Regulation of Cable TV.**

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

**§ 50-329. Franchise ordinances — Regulations.** — No ordinance granting a franchise in any city shall be passed on the day of its introduction, nor for thirty (30) days thereafter, nor until such ordinance shall have been published in at least one (1) issue of the official newspaper of the city; and after such publication, such proposed ordinance shall not thereafter and before its passage be amended in any particular wherein the amendment shall impose terms, conditions or privileges less favorable to the city than the proposed ordinance as published; but amendments favorable to the city may be made at any time and after publication; provided that an ordinance granting a franchise to lay a spur, railroad track or tracks connecting manufacturing plants, warehouses or other private property with a main railroad line, need not be published before the same is passed by the council. No franchise shall be created or granted by the city council otherwise than by ordinance, and the passage of any such ordinance shall require the affirmative vote of one-half (1/2) plus one (1) of the members of the full council. Franchises created or granted by the city council for electric, natural gas or water public utilities, as defined in chapter 1, title 61, Idaho Code, or to cooperative electrical associations, as defined in section 63-3501(a), Idaho Code, shall be for terms of not less than ten (10) years and not greater than fifty (50) years unless otherwise agreed to by the utility or cooperative electrical association. All publications of ordinances granting a franchise, both before and after passage, shall be made at the expense of the applicant or grantee. Where an ordinance granting a franchise is sought to be amended after the same has been in force, the provisions of this section as to publication, before final action upon such amendment, shall apply as in cases of proposed ordinances granting original franchises.

**History.**

1967, ch. 429, § 25, p. 1249; am. 1995, ch. 226, § 1, p. 777.

**CASE NOTES**

Objection to franchise, estoppel.

Presumptions.

Relation to highway district legislation.

### **Objection to Franchise, Estoppel.**

Where plaintiffs participated in the bidding and award of cable television franchise process by city and no protest was made by the plaintiffs when the several city governments banded together to form the committee to investigate the award and recommend the franchise, nor any objection was lodged against the prospect of the various cities granting franchises, the trial court did not err in holding that the plaintiffs were estopped from pursuing collateral attacks upon grant of franchise to others or upon ordinance or upon any other known defect. *KTVB, Inc. v. Boise City*, 94 Idaho 279, 486 P.2d 992 (1971).

### **Presumptions.**

Franchise ordinances are presumed valid with the burden on those challenging the ordinance to prove their invalidity. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

### **Relation to Highway District Legislation.**

The highway district legislation contained in title 40, chapters 13 and 14, does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

## **OPINIONS OF ATTORNEY GENERAL**

### **Regulation of Cable TV.**

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

**§ 50-329A. Franchise ordinances — Fees.** — (1) This section applies to franchises granted by cities to electric, natural gas and water public utilities, as defined in chapter 1, title 61, Idaho Code, and to cooperative electrical associations, as defined in subsection (a) of section 63-3501, Idaho Code, which provide service to customers in Idaho and which shall also be known as “public service providers” for purposes of this section. Notwithstanding any other provision of law to the contrary, cities may include franchise fees in franchises granted to public service providers, only in accordance with the following terms and conditions:

(a) Franchise fees assessed by cities upon a public service provider shall not exceed one percent (1%) of the public service provider’s “gross revenues” received within the city without the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. In no case shall the franchise fee exceed three percent (3%), unless a greater franchise fee is being paid under an existing franchise agreement, in which case the franchise agreement may be renewed at up to the greater percentage, with the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. For purposes of this section, “gross revenues” shall mean the amount of money billed by the public service provider for the sale, transmission and/or distribution of electricity, natural gas or water within the city to customers less uncollectibles.

(b) Franchise fees shall be collected by the public service provider from its customers within the city, by assessing the franchise fee percentage on the amounts billed to customers for the sale, transmission and/or distribution of electricity, natural gas or water by the public service provider within the city. The franchise fee shall be separately itemized on the public service provider’s billings to customers.

(c) Cities collecting franchise fees shall also be allowed to collect user fees from consumers located within the city in the event such consumers purchase electricity, natural gas or water commodities and services from

a party other than the public service provider. The user fee shall be assessed on the purchase price of the commodities or services, including transportation or other charges, paid by the consumer to the seller and shall be collected by the city from the consumer. Except as provided in this subsection, user fees shall be subject to all of the same terms, rates, conditions and limitations as the franchise fee in effect in the city and as provided for in this section. This subsection shall not apply to a consumer to the extent that consumer is purchasing commodities and services from a party other than the public service provider on the effective date of this act, only until such time that the existing franchise agreement for the city in which the consumer is located either expires or is renegotiated.

(d) Franchise fees shall be paid by public service providers within thirty (30) days of the end of each calendar quarter.

(e) Franchise fees paid by public service providers will be in lieu of and as payment for any tax or fee imposed by a city on a public service provider by virtue of its status as a public service provider including, but not limited to, taxes, fees or charges related to easements, franchises, rights-of-way, utility lines and equipment installation, maintenance and removal during the term of the public service provider's franchise with the city.

(2) This section shall not affect franchise agreements which are executed and agreed to by cities and public service providers with an effective date prior to the effective date of this act.

### **History.**

I.C., § 50-329A, as added by 1995, ch. 226, § 2, p. 777; am. 1996, ch. 246, § 1, p. 776.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The phrase "the effective date of this act" in paragraph (1)(c) refers to the effective date of S.L. 1996, Chapter 246, which was effective January 1, 1996.



The phrase “the effective date of this act” in subsection (2) refers to the effective date of S.L. 1995, Chapter 226, which was effective March 20, 1995.

**Effective Dates.**

Section 3 of S.L. 1995, ch. 226 declared an emergency. Approved March 20, 1995.

Section 2 of S.L. 1996, ch. 246 declared an emergency and provided that the act shall be in full force and effect on and after its passage and approval and retroactive to January 1, 1996. Approved March 14, 1996.

**§ 50-330. Rates of franchise holders — Regulations.** — Cities shall have power to regulate the fares, rates, rentals or charges made for the service rendered under any franchise granted in such city, except such as are subject to regulation by the public utilities commission.

**History.**

1967, ch. 429, § 26, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Public utilities commission, § 61-201 et seq.

**OPINIONS OF ATTORNEY GENERAL**

**Regulation of Cable TV.**

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

**§ 50-331. Control of waters.** — Cities may establish, alter and change the channels of watercourses and wall or cover the same within the boundaries of the city and outside the corporate limits to the extent necessary to preserve the watercourse.

**History.**

1967, ch. 429, § 52, p. 1249.

**§ 50-332. Control of sewers and drains.** — Cities are authorized to clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain or sewer or any watercourse in such city when not declared, by law, to be navigable and, as provided in section 50-1008[, Idaho Code], assess the expense thereof in whole or in part to the property specially benefited thereby.

**History.**

1967, ch. 429, § 58, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Eminent domain, drainage of cities and villages, § 7-701.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

Decisions Under Prior Law

Changing ditch channels.

Extension of street across lawful ditch.

Irrigation ditch.

**Changing Ditch Channels.**

A city was entitled to alter or change the channel of a ditch carrying irrigation waters through the townsite at its own expense and sole discretion. *Cox v. City of Pocatello*, 77 Idaho 225, 291 P.2d 282 (1955).

**Extension of Street Across Lawful Ditch.**

It was duty of city to cover ditch running alongside street if it was considered dangerous, or otherwise to protect people from such danger.

[City of Twin Falls v. Harlan, 27 Idaho 769, 151 P. 1191 \(1915\).](#)

Where ditch had been constructed and operated in accordance with law, it was not nuisance, and could become one only by reason of manner in which it had been maintained and operated. Fact that municipality subsequently extended street along and included in it right of way for such ditch did not convert such ditch into a nuisance. [City of Twin Falls v. Harlan, 27 Idaho 769, 151 P. 1191 \(1915\).](#)

### **Irrigation Ditch.**

In a suit by property owners for an injunction and damages for failure of city to deliver irrigation water to their properties pursuant to contract by means of a ditch running through townsite, the city could not contend on appeal that it was authorized to control alleys, streets, sewers and drains to the exclusion of any permissive use, since the property owners did not allege any permissive use, but only asserted a right under contract to the transmission of irrigation waters through the townsite. [Cox v. City of Pocatello, 77 Idaho 225, 291 P.2d 282 \(1955\).](#)

## **RESEARCH REFERENCES**

**ALR.** — Liability of abutting landowner for injury to municipal employee engaged in constructing or repairing sewers or drains. [58 A.L.R.3d 1085.](#)

Compensation for diminution in value of the remainder of property resulting from taking or use of adjoining land of others for the same undertaking. [59 A.L.R.3d 488.](#)

Validity and construction of regulation by municipal corporation fixing sewer-use rates. [61 A.L.R.3d 1236.](#)

**§ 50-333. Flood prevention — Drainage.** — Cities are authorized to prevent the flooding of the city or to secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the city limits, when necessary to protect the safety of life and property of the city. Any city shall have power to cause any parcel of land within its limits on which water may at any time become stagnant to be filled or drained in such manner as may be directed by a resolution of the council, and such owner or his agent shall, after service of a copy of such resolution, comply with the directions of such resolution within the time therein specified; and in case of failure or refusal to do so, it may be done by said city and the amount of money so expended shall be assessed against such property and the amount thereof collected as special assessments under section 50-1008[, Idaho Code].

**History.**

1967, ch. 429, § 59, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**§ 50-334. Abatement of nuisances.** — Cities are empowered to declare what shall be deemed nuisances, to prevent, remove and abate nuisances at the expense of the parties creating, causing, committing or maintaining the same, to levy a special assessment as provided in section 50-1008, Idaho Code, on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same, and this power shall extend three (3) miles beyond the city limits, provided however, that the expense of declaring, preventing, removing and abating nuisances outside the city limits shall rest with the city when the nuisance comes within the three (3) mile area by reason of expansion of city boundaries.

**History.**

1967, ch. 429, § 60, p. 1249; am. 1967, ch. 431, § 1, p. 1417; am. 2010, ch. 79, § 18, p. 133.

**STATUTORY NOTES**

**Cross References.**

Abatement of moral nuisances, § 52-401 et seq.

Nuisances generally, title 52, Idaho Code.

Repression of prostitution under health laws, § 39-603.

**Amendments.**

The 2010 amendment, by ch. 79, updated the section reference.

**CASE NOTES**

**Cited** [Roell v. Boise City, 130 Idaho 199, 938 P.2d 1237 \(1997\).](#)

Decisions Under Prior Law [Abatement of nuisances.](#)

[Declaring a nuisance.](#)

[Abatement of Nuisances.](#)

While village might have abated nuisance within its limits, if it wished to abate nuisance outside its boundaries, it was proper and probably necessary for it to apply to a court of equity. *Village of Am. Falls v. West*, 26 Idaho 301, 142 P. 42 (1914).

### **Declaring a Nuisance.**

City may have declared anything a nuisance which was such in fact or per *accidens* , as well as that which was a nuisance per se. *Rowe v. City of Pocatello*, 70 Idaho 343, 218 P.2d 695 (1950).



**§ 50-335. Destruction of buildings inimical to safety and health. —**

All cities in the state of Idaho shall have power to declare any building or structure to be a nuisance which, in the opinion of the city council, is so dilapidated or is in such condition as to menace the public health or the safety of persons or property on account of increased fire hazard or otherwise; and any council may cause the destruction or removal of any such building or structure at the expense of the person or persons, associations, corporations or copartnerships holding, owning or maintaining the same, and to levy a special assessment as provided in section 50-1008[, Idaho Code], on the land or premises whereon the nuisance is situated, to defray the cost or to reimburse the city for the cost of destruction or removal of said building or structure so declared to be a nuisance.

**History.**

1967, ch. 429, § 61, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was inserted by the compiler to conform to the statutory citation style.

**CASE NOTES**

Decisions Under Prior Law [Instruction](#).

[Liability for improper destruction.](#)

[Nature of hazard.](#)

**[Instruction.](#)**

The instruction given by the trial court to the effect that, if the building was in fact a nuisance, the city had the burden of showing it gave the property owner reasonable notice and opportunity to repair and remove the structure and if the city failed to give such notice and provide such opportunity before destroying the building, it was liable for damages, was a

correct statement of the law. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

### **Liability for Improper Destruction.**

Where the city ordered a building summarily destroyed which was not a nuisance per se, it did so at its peril, and, if it was found the structure was not in fact a nuisance, the owner might recover damages. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

### **Nature of Hazard.**

Even though the building was littered with debris, and transients were living there and using candles and cigarettes creating a fire hazard, these conditions being caused by the use to which the house was put were not hazards inherent in the building itself; therefore, the building could not be destroyed as a nuisance by the city, it being apparent such hazardous condition could be remedied by cleaning and repairs without major reconstruction. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

To be lawfully destroyed as a nuisance, a building must be a nuisance per se or in fact. If it is neither, it cannot be made a nuisance by declaration of the city council. *Albert v. City of Mt. Home*, 81 Idaho 74, 337 P.2d 377 (1959).

## **RESEARCH REFERENCES**

**ALR.** — Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense. 43 A.L.R.3d 916.

**§ 50-336. Traffic safety education program — Fees.** — (1) Cities may by ordinance elect to offer a traffic safety education program to all drivers issued an infraction citation by a city law enforcement officer for a moving violation not involving a collision. Citations allowing the traffic safety education program alternative shall only be issued pursuant to section 49-1501, Idaho Code, and as permitted by this section. Such traffic safety education program shall be for the purpose of educating drivers in traffic safety concepts. Drivers qualified under this section who desire to pay the fixed penalty and court costs in lieu of appearing in court on the citation may also elect to attend a traffic safety education program offered by a city under this section as an alternative to receiving violation points and insurance rating charges as provided in subsection (6) of this section. At the time of issuance of the citation, drivers shall elect whether they wish to attend the program and, if so, the citing officer shall record the election in the uniform citation. The citing officer shall provide to the driver a written notice of the available times, locations and the cost of the program or a written notice identifying a telephone number or internet website address where such information can be obtained. The driver shall have forty-five (45) days from the date of issuance of the citation to complete the traffic safety education program. A driver electing to attend the program shall pay the fixed penalty and court costs for the citation to the clerk of the court as provided in the citation and pay the program fee, if any, separately to the city at or before the time of attendance at the program. Any person who fails to complete the offered traffic safety education program within the forty-five (45) days after voluntarily electing to attend will not receive the relief provided in subsection (6) of this section. Before issuing a citation allowing the traffic safety education program alternative, the citing officer shall ensure that the driver is not disqualified under subsection (2) of this section.

(2) The traffic safety education program option allowed under subsection (1) of this section is not available to:

(a) Any driver holding a commercial driver's license or any person driving a commercial motor vehicle; or

(b) Any driver having received within the last three (3) years relief from violation points under subsection (6) of this section or having received a point reduction as provided in rules of the Idaho department of transportation for completing any defensive driving or driver safety course.

(3) If the city imposes a traffic safety education program fee, such fee shall not exceed twenty-five dollars (\$25.00).

(4) If the city collects a program fee from a driver disqualified from the traffic safety education program alternative, the city shall refund the program fee to the driver no later than ten (10) days following the discovery of the error. If the driver has already completed the program, the city shall, no later than ten (10) days following the discovery of the error, so notify the clerk of the court and the driver and shall advise the driver that the relief provided in subsection (6) of this section is not available and shall pay to the driver twenty-five dollars (\$25.00) as liquidated damages for the error, in addition to refunding the program fee.

(5) The city clerk or other authorized city official for the city in which the citation was issued shall within fifteen (15) days of the completion of the traffic safety education program by the cited driver transmit verification of the completion to the clerk of the county in which the citation was issued.

(6) When a person has successfully completed a traffic safety education program for an infraction citation, the infraction shall not result in violation point counts as prescribed in [section 49-326, Idaho Code](#), nor shall the infraction be deemed to be a moving violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(7) The Idaho supreme court shall establish such rules as deemed necessary to implement the provisions of this section.

### **History.**

[I.C., § 50-336](#), as added by 2013, ch. 292, § 1, p. 769.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-336, defining “service function,” which comprised S.L. 1967, ch. 429, § 62, was repealed by S.L. 1970, ch. 38, § 9. For present comparable law, see §§ 67-2326 to 67-2333.

**Effective Dates.**

Section 2 of S.L. 2013, ch. 292 provided: “This act shall be in full force and effect on and after January 1, 2014.”

**§ 50-337 — 50-340. Joint service functions. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 63 to 66, were repealed by S.L. 1970, ch. 38, § 9. For present comparable law, see §§ 67-2326 — 67-2333.

**§ 50-341. Competitive bidding — Application of law. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1967, ch. 429, § 67, p. 1249; am. 1975, ch. 34, § 1, p. 60; am. 1979, ch. 62, § 1, p. 165; am. 1981, ch. 289, § 2, p. 595; am. 1983, ch. 89, § 3, p. 185; am. 1984, ch. 136, § 1, p. 321; am. 1987, ch. 161, § 1, p. 316; am. 1995, ch. 164, § 1, p. 644; am. 1998, ch. 397, § 2, p. 1241, was repealed by S.L. 2005, ch. 213, § 17.

**§ 50-342. Electric power — Purchase or disposal.** — In addition to the powers otherwise conferred on cities of this state, a city owning and operating an electric distribution system shall have the authority to:

(a) Purchase, or generate, or both, electric power and energy for the purpose of disposing of such power and energy to the United States of America, department of energy, acting by and through the Bonneville power administration, or its successor, through exchange, net billing or any arrangement which is used for supplying the needs of the city for electric power or energy;

(b) Enter into power sales or power purchase contracts with entities engaged in generating, transmitting, or distributing electric power and energy to provide for the purchase, sale or exchange of electric power or energy upon such terms and conditions as shall be specified in the power sales or purchase contract; and

(c) Establish, operate and fund energy conservation or other public purpose programs for the purpose of promoting efficient use of energy and energy conservation by city consumers including, but not limited to, programs to install energy efficient and energy conservation devices or measures in consumer buildings and structures served by the city and to grant low-interest loans to city consumers for the installation of such measures, provided such measures are provided on a nondiscriminatory basis to all classes of customers similarly situated;

and such authority shall not be subject to the requirements, limitations, or procedures contained in sections 50-325, 50-327 and chapter 28, title 67, Idaho Code.

### **History.**

**I.C., § 50-342**, as added by 1971, ch. 31, § 1, p. 75; am. 1981, ch. 30, § 1, p. 48; am. 1982, ch. 194, § 1, p. 521; am. 1999, ch. 283, § 1, p. 705; am. 2005, ch. 213, § 18, p. 637.

### **STATUTORY NOTES**



## **Effective Dates.**

Section 2 of S.L. 1981, ch. 30 declared an emergency. Approved March 17, 1981.

## **CASE NOTES**

### **Purchase of Project Capability.**

There is no statutory authorization for the purchase of “project capability” where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired; the municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power but is underwriting another entity’s indebtedness in return for merely the possibility of electricity. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Agreement between cities and power company by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects, did not come within ordinary and necessary proviso of Idaho *Const., Art. VIII, § 3* and consequently, was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the constitution. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

**§ 50-342A. Participation in generation and transmission projects. —**

(1) It is hereby determined and declared that securing long-term electric generation and transmission resources at cost-based rates is essential to the ability of municipal utilities to provide reliable and economic electric services at stable prices to the consumers and communities they serve and is essential to the economy and the economic development of their communities and to the public health, safety and welfare. It is further determined and declared that in order to facilitate the development of such cost-based resources, it is necessary and desirable that municipal electrical utilities have sufficient flexibility and statutory authority to pay the ordinary and necessary expenses associated with the operation and maintenance of such cost-based resources.

(2) When used in this section the following terms shall have the following meanings:

(a) “Joint electric facilities” means all works, facilities and property necessary or useful in the generation or transmission of electric power and energy.

(b) “Participants” means a city and the other parties to a participation agreement, including municipalities or public agencies of other states who have authority to own, construct, develop and operate joint electric facilities under the laws of such state.

(c) “Participation agreement” means:

(i) An agreement providing for the joint ownership and operation of joint electric facilities; or

(ii) A long-term power purchase agreement providing for the right to receive a share of the capacity or output of joint electric facilities at cost-based rates.

(3) In order to obtain long-term electric generation and transmission resources at cost-based rates, a city that owns and operates a municipal electric utility system may acquire an undivided ownership interest in, or a contractual right to the capacity, output or services of, joint electric facilities under a participation agreement with one (1) or more investor-owned,

cooperative or municipal utilities or with other entities engaged in the generation or transmission of electricity. Prior to entering into any participation agreement, the governing body of the city shall consider:

- (a) The city's long-term power supply and transmission requirements;
- (b) The efficiencies and economies of scale expected to be achieved by participating with others in the acquisition or construction of joint electric facilities;
- (c) The estimated cost, commercial operation date and useful life of the joint electric facilities;
- (d) The financial, regulatory and technical feasibility of constructing and operating such joint electric facilities; and
- (e) The availability, reliability and cost of existing or alternate power supply and transmission resources.

In order to facilitate such consideration, the city may retain engineering, financial or other consultants to provide advice and recommendations concerning such long-term power supply or transmission facilities and in such event, all written reports prepared by such consultants shall be made a matter of record and be available to the public in accordance with the provisions of the Idaho public records act.

- (4) Each participation agreement shall include provisions regarding:
  - (a) The specific joint or undivided ownership interests of the participants in the joint electric facilities or the specific contractual rights of the participants to the capacity, output or services of the joint electric facilities, any restrictions on the right of the participants to withdraw from participation in the operation of the joint electric facilities or restrictions upon transfer or partition of such interests or rights and the method for allocating the capacity or output of the joint electric facilities among the participants;
  - (b) The creation of a management committee comprised of representatives of the participants which shall be responsible for the governance of the acquisition, construction and operation of the joint electric facilities, and provisions granting each participant voting rights

proportional to its percentage entitlement to the output or capacity of such joint electric facilities;

(c) The acquisition, construction and operation of the joint electric facilities and the appointment of construction and operation managers and agents and the employment of personnel in connection with the joint electric facilities, which may include provisions for the indemnification of such managers, agents and personnel;

(d) The methods for financing the costs of acquisition, construction and operation of the joint electric facilities, which may include provisions obligating or enabling each participant to finance its proportional share of such costs, based on its ownership interest in or contractual rights to the joint electric facilities;

(e) The allocation of the costs of acquisition, construction and operation of the joint electric facilities among the participants proportional to the percentage entitlement to the output or capacity of such joint electric facilities and the specific obligations of the participants to pay such costs, which may include a provision obligating each participant to pay its respective share of all costs of the joint electric facilities regardless of whether such facilities are acquired, completed, operable or operating and notwithstanding the suspension or reduction of the capacity, output or services of the joint electric facilities for any reason;

(f) The remedies upon a default by any participant in the performance of its obligations under the participation agreement, which may include a provision obligating or enabling the other participants to succeed to all or a portion of the ownership interest or contractual rights and obligations of the defaulting participant;

(g) The liabilities of the participants, which shall be several and not joint and no participant shall be obligated for the acts, omissions or obligations of any other participant; and

(h) The amendment and termination of the agreement, and for the decommissioning of the joint electric facilities and the funding of the costs thereof.

(5) A city may finance its proportionate share of the acquisition, construction and operation costs of joint electric facilities through the

issuance of its bonds as provided by law or through financing arrangements with the Idaho energy resources authority under chapter 89, title 67, Idaho Code.

**History.**

I.C., § 50-342A, as added by 2007, ch. 28, § 1, p. 55.

**STATUTORY NOTES**

**Cross References.**

Idaho public records act, § 74-101 et seq.

**Compiler's Notes.**

Section 2 of S.L. 2007, ch. 28 provided “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act”.

**Effective Dates.**

Section 3 of S.L. 2007, ch. 28 declared an emergency. Approved February 23, 2007.

**§ 50-343. Regulation of firearms — Control by state. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-343**, as added by S.L. 1984, ch. 243, § 2, p. 590, was repealed by S.L. 2008, ch. 304, § 1, effective March 28, 2008. For present comparable provisions, see § 18-3302J.

**§ 50-344. Solid waste disposal.** — (1) Cities shall have the power to maintain and operate solid waste collection systems. Such maintenance and operation may, by exclusive or nonexclusive means, be performed by:

- (a) Employees, facilities, equipment and supplies engaged or acquired by cities;
- (b) Contracts, franchises or otherwise providing maintenance and operation performed by private persons;
- (c) Contracts providing for maintenance and operation performed by another unit of government;
- (d) Contracts, franchises or otherwise for maintenance and operation that may provide solid waste collection for all or geographic parts of a city;
- (e) Any combination of paragraphs (a), (b), (c), and (d) of this section [subsection].

(2) Upon a finding by the mayor or city manager for public safety or necessary protection of public health and welfare and property, the provisions of chapter 28, title 67, Idaho Code, shall not apply to solid waste collection, as provided herein.

(3) Before entering into such contracts, franchises or otherwise, a city may require such security for the performance thereof as it deems appropriate or may waive such undertaking.

### **History.**

**I.C., § 50-344**, as added by 1986, ch. 19, § 1, p. 59; am. 2004, ch. 144, § 2, p. 473; am. 2005, ch. 213, § 19, p. 637.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The bracketed insertion in paragraph (1)(e) was added by the compiler to clarify the statutory reference.

## **CASE NOTES**

### **Exclusive Franchise.**

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under [Const. Art. XII, § 2](#) and, under § 48-107(c), it is afforded a statutory exemption from the Idaho Competition Act. Since this section does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. [Plummer v. City of Fruitland, 139 Idaho 810, 87 P.3d 297 \(2004\)](#).



**§ 50-345. Computerized mapping system fees.** — (1) As used in this section, “computerized mapping system” or “system” means the digital storage, processing and retrieval of cadastral information derived from local government records and related information such as land use, topography, water, streets and geographic features.

(2) In a city which develops a computerized mapping system, the city council may impose and collect fees from the users of this system for the development, maintenance and dissemination of digital forms of the system. These fees shall not exceed the actual costs of development, annual maintenance and dissemination of the computerized mapping system. These fees shall not apply to official paper maps produced from the computerized mapping system.

**History.**

I.C., § 50-345, as added by 1995, ch. 129, § 1, p. 562.

Idaho Code Ch. 4

• [Title 50](#)», « [Ch. 4](#) »

## Chapter 4

### MUNICIPAL ELECTIONS

Sec.

50-401. Short title.

50-402. Definitions.

50-403. Supervision of administration of election laws by county clerk.

50-404. Registration of electors.

50-405. General and special city elections.

50-406. Method of nomination — Clerk to furnish printed forms.

50-407. Form of declaration of candidacy.

50-408. Designation of polling places. [Repealed.]

50-409. Appointment of election judges and clerks. [Repealed.]

50-410. Time and manner of filing declarations.

50-411. Notice of candidate filing deadline.

50-412. Canvassing votes — Determining results of election.

50-413. Tie votes.

50-414. Failure to qualify creates vacancy.

50-415. Certificates of elections.

50-416. Application for recount of ballots.

50-417. Recall elections.

50-418. Initiative and referendum elections.

50-419. Election law violations.

50-420. Application of campaign reporting law to elections in certain cities.  
[Repealed.]

50-421. Qualifications for registration. [Repealed.]

50-422. Reregistration of elector who changes residence. [Repealed.]

50-423, 50-424. Registration cards — Registration — When required. [Repealed.]

50-425. Affidavit voting of elector who moves to another precinct. [Repealed.]

50-426. Change of name — Voting. [Repealed.]

50-427. Challenges of entries in combination election record and poll book. [Repealed].

50-428. Combination election record and poll book. [Repealed.]

50-429. General and special city elections. [Amended and Redesignated.]

50-430. Method of nomination — Clerk to furnish printed forms. [Amended and Redesignated.]

50-431. Form of declaration of candidacy. [Amended and Redesignated.]

50-432. Time and manner of filing declarations. [Amended and Redesignated.]

50-433 — 50-434. Signatures on nominating petitions — Revocation of signature. [Repealed.]

50-435. Notice of candidate filing deadline. [Amended and Redesignated.]

50-436. Notice of election — Contents — Publication. [Repealed.]

50-437. Official election stamp. [Repealed.]

50-438. Ballots and election supplies. [Repealed.]

50-439. Preparation and contents of ballot. [Repealed.]

50-440. Sample ballots. [Repealed.]

50-441. Procedure for correction of ballots after printing. [Repealed.]

50-442. Voting by absentee ballot authorized. [Repealed.]

50-443. Application for absentee ballot. [Repealed.]

50-444. Classifications for absent elector's ballot. [Repealed.]

50-445. Issuance of absentee ballot. [Repealed.]

50-446. Marking and folding of absentee ballot — Affidavit. [Repealed.]

50-447. Return of absentee ballot. [Repealed.]

50-448. City clerks shall provide an absent elector's voting place. [Repealed.]

50-449. Transmission of absentee ballots to polls. [Repealed.]

50-450. Deposit of absentee ballots. [Repealed.]

50-451. Record of applications for absentee ballots. [Repealed.]

50-452. Duties of city clerk on election day. [Repealed.]

50-453. Opening and closing polls. [Repealed.]

50-454. Changing polling place — Proclamation and notice. [Repealed.]

50-455. Opening ballot boxes. [Repealed.]

50-456. Judges may administer oaths — Challenge of voters. [Repealed.]

50-457. Enforcement duties of judge. [Repealed.]

50-458. Signing combination election record and poll book — Delivery of ballot to elector. [Repealed.]

50-459. Manner of voting. [Repealed.]

50-460. Assistance to voter. [Repealed.]

50-461. Spoiled ballots. [Repealed.]

50-462. Officers not to divulge information. [Repealed.]

50-463. Counting of votes. [Repealed.]

50-464. Comparison of poll lists and ballots — Void ballots. [Repealed.]

50-465. Counting of ballots. [Repealed.]

50-466. Transmission of supplies to city clerk. [Repealed.]

50-467. Canvassing votes — Determining results of election. [Amended and Redesignated.]

50-468. Tie votes. [Amended and Redesignated.]

50-469. Failure to qualify creates vacancy. [Amended and Redesignated.]

- 50-470. Certificates of elections. [Amended and Redesignated.]
- 50-471. Application for recount of ballots. [Amended and Redesignated.]
- 50-472. Recall elections. [Amended and Redesignated.]
- 50-473. Initiative and referendum elections. [Amended and Redesignated.]
- 50-474. Voting by machine or vote tally system. [Repealed.]
- 50-475. Election law violations. [Amended and Redesignated.]
- 50-476. Adoption of state registration procedures — Joint registration.  
[Repealed.]
- 50-477. Application of campaign reporting law to elections in certain cities.  
[Amended and Redesignated.]
- 50-478. Limitation of ballot access for multi-term incumbents. [Repealed.]
- 50-479. Application of persuasive poll requirements. [Repealed.]

**§ 50-401. Short title.** — This chapter shall be known and cited as the “Idaho Municipal Election Laws.”

**History.**

**I.C., § 50-401**, as added by 1978, ch. 329, § 2, p. 825.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-401 — 50-413, 50-415, which comprised S.L. 1967, ch. 429, §§ 75-84, 86, 87, 89, 96, p. 1249; **I.C., § 50-411**, as added by 1973, ch. 303, § 2, p. 645; am. 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 1.

**§ 50-402. Definitions.** — The following words and phrases when used in this chapter, have the meanings respectively given herein.

(a) General election. “General election” means the election held on the first Tuesday succeeding the first Monday in November in each odd-numbered year at which there shall be chosen all mayors and councilmen as are by law to be elected in such years.

(b) Special election. “Special election” means any election other than a general election held at any time for any purpose provided by law.

(c) Qualified elector. A “qualified elector” means any person who is at least eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote and who is registered within the time period provided by law. A “qualified elector” shall also mean any person who is at least eighteen (18) years of age, is a United States citizen, who is a registered voter, and who resides in an area that the city has annexed pursuant to chapter 2, title 50, Idaho Code, within thirty (30) days of a city election.

(d) Residence.

(1) “Residence” for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence. In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, and motor vehicle registration.

(2) A qualified elector shall not be considered to have gained residence in any city of this state into which he comes for temporary purposes only



without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(3) A qualified elector who has left his home and gone to another area outside the city, for a temporary purpose only shall not be considered to have lost his residence.

(4) If a qualified elector moves outside the city, with the intentions of making it his permanent home, he shall be considered to have lost his residence in the city.

(e) Election official. “Election official” means the city clerk, registrar, judge of election, clerk of election, or county clerk engaged in the performance of election duties.

(f) Reference to male. All references to the male elector and male city officials include the female elector and female city officials and the masculine pronoun includes the feminine.

(g) Computation of time. Calendar days shall be used in all computations of time made under the provisions of this chapter. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Saturdays, Sundays and legal holidays shall be included, but if the time for any act to be done shall fall on Saturday, Sunday or a legal holiday, such act shall be done upon the day following each Saturday, Sunday or legal holiday.

### **History.**

**I.C., § 50-402**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 81, § 1, p. 148; am. 1983, ch. 45, § 1, p. 115; am. 1994, ch. 66, § 1, p. 135; am. 2002, ch. 75, § 2, p. 164; am. 2009, ch. 341, § 102, p. 993.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-402 was repealed. See Prior Laws, § 50-401.

### **Amendments.**

The 2009 amendment, by ch. 341, in subsection (c), twice inserted “at least” preceding “eighteen (18) years of age”; in subsection (e), substituted

“county clerk” for “constable,” and deleted “as required by this act” from the end; deleted subsections (f) through (h), which were the definitions for “election register,” “combination election record and poll book,” and “tally book,” and made related redesignations; and, in present subsection (g), substituted “provisions of this chapter” for “provision of this act.”

**Effective Dates.**

Section 2 of S.L. 1994, ch. 66 declared an emergency. Approved March 7, 1994.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-403. Supervision of administration of election laws by county clerk.** — For each city, the county clerk of the county is the chief elections officer and shall exercise general supervision of the administration of the election laws in the city for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity. The county clerk shall meet with and issue instructions to election judges and clerks prior to the opening of the polls to ensure uniformity in the application, operation and interpretation of the election laws during the election.

**History.**

**I.C., § 50-403**, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 11, p. 620; am. 2009, ch. 341, § 103, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-403 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2007 amendment, by ch. 202, added the last paragraph.

The 2009 amendment, by ch. 341, in the section catchline and in the last sentence, substituted “county clerk” for “city clerk”; in the first sentence, substituted “For each city, the county clerk of the county is the chief elections officer” for “Each city clerk is the chief elections officer”; and deleted the last paragraph, which dealt with emergency procedures handled by the city clerk.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-404. Registration of electors.** — All electors must register before being able to vote at any municipal election. The county clerk shall be the registrar for all city elections and shall conduct voter registration for each city pursuant to the provisions of chapter 4, title 34, Idaho Code. To be eligible to register to vote in city elections, a person shall be at least eighteen (18) years of age, a citizen of the United States and a resident of the city for at least thirty (30) days next preceding the election at which he desires to vote, or a resident of an area annexed by a city pursuant to the provisions of chapter 2, title 50, Idaho Code.

**History.**

I.C., § 50-414, as added by 1993, ch. 379, § 4, p. 1392; am. and redesign. 2009, ch. 341, § 105, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-404, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-404 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-414; substituted “chapter 4, title 34, Idaho Code” for “[section 34-1402, Idaho Code](#)” at the end of the second sentence; and added the last sentence.

**Effective Dates.**

Section 6 of S.L. 1993, ch. 379, § 6 provided that the act should be in full force and effect on and after January 1, 1994.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-405. General and special city elections.** — (1) A general election shall be held in each city governed by this title, for officials as in this title provided, on the Tuesday following the first Monday of November in each odd-numbered year. All such officials shall be elected and hold their respective offices for the term specified and until their successors are elected and qualified. All other city elections that may be held under authority of general law shall be known as special city elections.

(2)(a) No city election shall be held for an office if, after the deadline for filing a declaration of intent to be a write-in candidate for the office, it appears:

(i) For the office of mayor, only one (1) person has filed a declaration of candidacy or a declaration of intent to be a write-in candidate;

(ii) For the office of city council member in cities that have established designated seats, as provided in [section 50-707, Idaho Code](#), only one (1) person has filed a declaration of candidacy or a declaration of intent to be a write-in candidate for a particular seat up for election for a two (2) year term or a four (4) year term; or

(iii) For the office of city council member in cities that do not have designated council seats as provided in [section 50-707, Idaho Code](#), the number of people who have filed a declaration of candidacy or a declaration of intent to be a write-in candidate is equal to or fewer than the number of council positions up for election for a two (2) year term or a four (4) year term.

(b) If the provisions of paragraph (a) of this subsection have been met, the city clerk shall declare such candidate elected. The candidate shall receive a certificate of election and be installed at the first city council meeting in January following the election.

(3) On and after January 1, 2011, notwithstanding any other provisions of law to the contrary, there shall be no more than two (2) elections conducted in any city in any calendar year, except as provided in this section.

(4) The dates on which elections may be conducted are:

- (a) The third Tuesday in May of each year; and
- (b) The Tuesday following the first Monday in November of each year.
- (c) In addition to the elections specified in paragraphs (a) and (b) of this subsection, an emergency election may be called upon motion of the city council of a city. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or if it is necessary to do emergency work to safeguard life, health or property.

(5) Pursuant to [section 34-1401, Idaho Code](#), all city elections shall be conducted by the county clerk of the county wherein the city lies, and elections shall be administered in accordance with the provisions of title 34, Idaho Code, except as those provisions are specifically modified by the provisions of this chapter. After an election has been ordered, all expenses associated with conducting city general and special elections shall be paid from the county election fund as provided by [section 34-1411, Idaho Code](#). Expenses associated with conducting runoff elections shall be paid by the city adopting runoff elections pursuant to the provisions of section 50-612 or 50-707B, Idaho Code, or both.

(6) The secretary of state is authorized to provide such assistance as necessary and to prescribe any needed rules or interpretations for the conduct of elections authorized under the provisions of this section.

### **History.**

[I.C., § 50-429](#), as added by 1978, ch. 329, § 2, p. 825; am. 1993, ch. 379, § 2, p. 1392; am. and redesign. 2009, ch. 341, § 107, p. 993; am. 2020, ch. 76, § 1, p. 164.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 50-405, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-405 was repealed. See Prior Laws, § 50-401.

### **Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-429; substituted “2011” for “1994” and “two (2) elections” for “four (4) elections” in subsection (2); in subsection (3), deleted former paragraphs (a) and (c) which read “The first Tuesday in February of each year; and” and “The first Tuesday in August of each year; and”, redesignated former paragraphs (b), (d), and (e) as present paragraphs (a), (b), and (c), substituted “third Monday” for “fourth Monday” in present paragraph (a) and deleted the last sentence in paragraph (c), which read “Such a special election, if conducted by the city clerk, shall be conducted at the expense of the political subdivision submitting the question”; added present subsection (4); and redesignated former subsection (4) as subsection (5).

The 2020 amendment, by ch. 76, added present subsection (2); redesignated former subsections (2) to (5) as subsections (3) to (6); and, in subsection (5), substituted “city” for “municipal” near the beginning of the first and second sentences.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-406. Method of nomination — Clerk to furnish printed forms.**

— Candidates for elective city offices shall be nominated by declaration. The declaration shall contain the name and address of the person and the office and the term for which he is being nominated. There shall be no mention relating to party or principal of the nominee. The completed declaration of candidacy shall be accompanied by: (1) a petition of candidacy signed by not less than five (5) registered qualified electors; or (2) a nonrefundable filing fee of forty dollars (\$40.00) which shall be deposited in the city treasury.

It shall be the duty of the city clerk to furnish upon application a reasonable number of regular printed forms, as herein set forth, to any person or persons applying therefor. The forms shall be of uniform size as determined by the clerk.

**History.**

I.C., § 50-430, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 8, p. 164; am. and redesis. 2009, ch. 341, § 108, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-406, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-406 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-430.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**CASE NOTES**



**Authority of Clerk.**

City clerk's authority to review proposed city initiatives was limited to form only, clerk exceeded that authority by rejecting voters' initiative petition proposing the legalization of marijuana on the basis that it violated state law. [Davidson v. Wright, 143 Idaho 616, 151 P.3d 812 \(2006\)](#).

**§ 50-407. Form of declaration of candidacy.** — Declarations of candidacy and petitions of candidacy shall read substantially as herein set forth. Any number of separate petitions of candidacy may be circulated at the same time for any candidate and all petitions for each candidate shall be considered one (1) petition when filed with the city clerk. Each signer of a petition shall be a registered qualified elector.

#### DECLARATION OF CANDIDACY

I, the undersigned, affirm that I am a qualified elector of the City of ....., State of Idaho, and that I have resided in the city for at least thirty (30) days. I hereby declare myself to be a candidate for the office of ....., for a term of .... years, to be voted for at the election to be held on the .... day of ....., ....., and certify that I possess the legal qualifications to fill said office, and that my residence address is .....

(Signed) .....

Subscribed and sworn to before me this .... day of ....., .....

.....

Notary Public

State of Idaho

County of ..... ss.

City of .....

#### PETITION OF CANDIDACY

OF .....

(NAME OF CANDIDATE)

FOR OFFICE OF .....

This petition must be filed in the office of the City Clerk not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday immediately preceding election day. The submitted petition must have affixed thereto the names of at least five (5) qualified electors who reside within the appropriate city.

Subscribed and sworn to before me this .... day of ....., ....

Signed Notary Public .....

Residing at .....

Commission expires .....

(Notary Seal)

### **History.**

**I.C., § 50-431**, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 32, § 22, p. 46; am. 2002, ch. 75, § 9, p. 164; am. 2006, ch. 105, § 3, p. 288; am. and redesign. 2009, ch. 341, § 109, p. 993.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-407, which comprised S.L. 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 3, p. 164, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-407 was repealed. See Prior Laws, § 50-401.

### **Amendments.**

This section was amended by two 2002 acts — ch. 32, § 22 and ch. 75, § 9, both effective July 1, 2002, which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 32, made stylistic changes.

The 2002 amendment, by ch. 75, rewrote the section.

The 2006 amendment, by ch. 105, in the Petition of Candidacy form, substituted “eleventh Monday” for “eighth Friday” and “ninth Friday” for “sixth Friday” in the first paragraph.

The 2009 amendment, by ch. 341, redesignated this section from § 50-431.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-408. Designation of polling places. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

**History.**

I.C., § 50-408, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 115, § 3, p. 237; am. 2002, ch. 75, § 4, p. 164.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-408 was repealed. See Prior Laws, § 50-401.

**§ 50-409. Appointment of election judges and clerks. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

**History.**

I.C., § 50-409, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 1, p. 101; am. 1998, ch. 240, § 1, p. 797; am. 2002, ch. 75, § 5, p. 164.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-409 was repealed. See Prior Laws, § 50-401.

**§ 50-410. Time and manner of filing declarations.** — (1) All declarations of candidacy for elective city offices shall be filed with the clerk of the respective city wherein the elections are to be held not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday, immediately preceding election day. Before a candidate files a petition of candidacy with the city clerk, the petition signatures shall be verified by the county clerk in the manner described in section 34-1807, Idaho Code, except that the city clerk shall stand in place of the secretary of state. Before any declaration of candidacy and filing fee or petition of candidacy mentioned in section 50-407, Idaho Code, can be filed, the city clerk shall ascertain that it conforms to the provisions of chapter 4, title 50, Idaho Code. The city clerk shall not accept any declarations of candidacy after 5:00 p.m. on the ninth Friday immediately preceding election day. Write-in candidates shall be governed by section 34-702A, Idaho Code, but shall file the declarations required in that section with the city clerk.

(2) A person shall not be permitted to file a declaration of candidacy for more than one (1) office in any city election.

### **History.**

**I.C., § 50-432**, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 6, p. 101; am. 1996, ch. 337, § 1, p. 1137; am. 1998, ch. 240, § 3, p. 797; am. 2002, ch. 75, § 10, p. 164; am. 2006, ch. 105, § 4, p. 288; am. and redesign. 2009, ch. 341, § 110, p. 993; am. 2014, ch. 162, § 5, p. 455.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-410, which comprised S.L. 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 12, p. 620, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-410 was repealed. See Prior Laws, § 50-401.

### **Amendments.**

The 2006 amendment, by ch. 105, in the first sentence, substituted “eleventh Monday” for “eighth Friday” and “ninth Friday” for “sixth Friday”; substituted “Before a candidate files a petition of candidacy with the city clerk, the petition signatures” for “Signatures on petitions of candidacy” at the beginning of the second sentence; and substituted “ninth Friday” for “sixth Friday” in the next-to-last sentence.

The 2009 amendment, by ch. 341, redesignated this section from § 50-432 and substituted “section 50-407” for “section 50-431” in the third sentence.

The 2014 amendment, by ch. 162, added the subsection (1) designation and added subsection (2).

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-411. Notice of candidate filing deadline.** — Not more than fourteen (14) nor less than seven (7) days preceding the candidate filing deadline for an election, the city clerk shall cause to be published in the official newspaper a notice of the forthcoming candidate filing deadline. The notice shall state the name of the city, the date of the election, the offices up for election, that declarations of candidacy are available from the city clerk, and the deadline for filing such declarations with the city clerk.

**History.**

I.C., § 50-435, as added by 2006, ch. 105, § 5, p. 288; am. and redesign. 2009, ch. 341, § 111, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-411, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-411 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-435.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-412. Canvassing votes — Determining results of election.** — The county commissioners, within ten (10) days following any election, shall meet for the purpose of canvassing the results of the election. Upon receipt of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of city council proceedings. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one (1) office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected.

**History.**

I.C., § 50-467, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 113, p. 993; am. 2014, ch. 162, § 6, p. 455.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-412, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-412 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-467, substituted “The county commissioners, within ten (10) days” for “The mayor and the council, within six (6) days” in the first sentence, and inserted “city council” near the end of the second sentence.

The 2014 amendment, by ch. 162, in the second sentence, substituted “receipt” for “acceptance” and deleted “and proclaimed as final” from the end.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-413. Tie votes.** — In case of a tie vote between candidates, the city clerk shall give notice to the interested candidates to appear before the council at a meeting to be called within six (6) days at which time the city clerk shall determine the tie by a toss of a coin.

**History.**

**I.C., § 50-468**, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 114, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-413, which comprised **I.C., § 50-413**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 81, § 2, p. 148, was repealed by S.L. 2006, ch. 105, § 2.

Another former § 50-413 was repealed in 1978. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-468.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-414. Failure to qualify creates vacancy.** — If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.

**History.**

**I.C., § 50-469**, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 115, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-414, which comprised **I.C., § 50-414**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 61, § 1, p. 121, was repealed by S.L. 1993, ch. 379, § 3, p. 1392, effective January 1, 1994.

Another former § 50-414, which comprised S.L. 1967, ch. 429, § 88, p. 1249, was repealed by S.L. 1978, ch. 329, § 1, p. 825.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-469.

**Compiler's Notes.**

Pursuant to S.L. 2009, ch 341, § 105, former § 50-414 was amended and redesignated as section 50-404, effective January 1, 2011.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**CASE NOTES**

**Vacancies.**

Under this section, the positions of mayor and city councilman did not become vacant when the voter registrations of the candidates were

cancelled, after they had been sworn into office; failure to remain eligible for the office does not automatically create a vacancy. *City of Huetter v. Keene*, 150 Idaho 13, 244 P.3d 157 (2010).

**§ 50-415. Certificates of elections.** — A certificate of election for each elected city official or appointee to fill such position shall be made under the corporate seal by the city clerk, signed by the mayor and clerk, and presented to such officials at the time of subscribing to the oath of office.

**History.**

I.C., § 50-470, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 116, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-415, which comprised S.L. 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2009, ch. 341, § 104, effective January 1, 2011.

Another former § 50-415 was repealed. See Prior Laws, § 50-401.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-470.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**CASE NOTES**

**Cited** *City of Huetter v. Keene*, 150 Idaho 13, 244 P.3d 157 (2010).

**§ 50-416. Application for recount of ballots.** — Any candidate desiring a recount of the ballots cast in any general city election may apply to the attorney general therefor, within twenty (20) days of the canvass of such election by the county board of canvassers. The provisions of chapter 23, title 34, Idaho Code, shall govern recounts of elections held under this chapter.

### **History.**

**I.C., § 50-471**, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 117, p. 993.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

### **Prior Laws.**

Former §§ 50-416 — 50-421, which comprised **I.C., §§ 50-416 — 50-421**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

### **Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-471 and substituted “county board of canvassers” for “city council” at the end of the first sentence.

### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-417. Recall elections.** — Recall elections shall be governed by the provisions of chapter 17, title 34, Idaho Code, except as those provisions may be specifically modified by the provisions of this chapter.

**History.**

I.C., § 50-472, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 118, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-472.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-418. Initiative and referendum elections.** — Initiative and referendum elections shall be governed by the provisions of chapter 18, title 34, Idaho Code, and chapter 5, title 50, Idaho Code, except as those provisions are specifically modified by this chapter.

**History.**

**I.C., § 50-473**, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 119, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-416 — 50-421, which comprised **I.C., §§ 50-416 — 50-421**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-473.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-419. Election law violations.** — The provisions of chapter 23, title 18, Idaho Code, pertaining to crimes and punishments for election law violations are applicable to all municipal elections.

**History.**

I.C., § 50-475, as added by 1978, ch. 329, § 2, p. 825; am. and redesign. 2009, ch. 341, § 121, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

**Amendments.**

The 2009 amendment, by ch. 341, redesignated this section from § 50-475 and substituted “applicable to all municipal elections” for “hereby incorporated in this chapter” at the end of the section.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-420. Application of campaign reporting law to elections in certain cities. [Repealed.]**

Repealed by S.L. 2019, ch. 288, § 23, effective January 1, 2020. See § 67-6601 et seq.

**History.**

**I.C., § 50-477**, as added by 1982, ch. 229, § 1, p. 606; am. 2004, ch. 14, § 1, p. 11; am. 2004, ch. 177, § 1, p. 559; am. 2005, ch. 254, § 5, p. 777; am. 2007, ch. 202, § 16, p. 620; am. and redesign. 2009, ch. 341, § 122, p. 993; am. 2012, ch. 162, § 2, p. 437.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-416 to 50-421, which comprised **I.C., §§ 50-416 to 50-421**, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 to 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

**§ 50-421. Qualifications for registration. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-416 — 50-421, which comprised I.C., §§ 50-416 — 50-421, as added by 1978, ch. 329, § 2, p. 825; am. 1982, ch. 80, § 1, p. 147; am. 1982, ch. 81, § 3, p. 148; am. 1989, ch. 64, §§ 2, 3, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

Another former §§ 50-416 — 50-421, which comprised S.L. 1967, ch. 429, §§ 90-95; 1975, ch. 94, § 1, p. 191, were repealed by S.L. 1978, ch. 329, § 3.

**§ 50-422. Reregistration of elector who changes residence.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-422**, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 1981, ch. 255, § 4.

Idaho Code § 50-423,

**§ 50-423, 50-424. Registration cards — Registration — When required. [Repealed.]**

## STATUTORY NOTES

### **Prior Laws.**

Another former § 50-423, which comprised S.L. 1970, ch. 232, § 1, p. 649, was repealed by S.L. 1978, ch. 329, § 1.

### **Compiler's Notes.**

These sections, which comprised I.C., §§ 50-423, 50-424 as added by 1978, ch. 329, § 2, p. 825; am. 1981, ch. 255, § 5, p. 545; am. 1985, ch. 83, §§ 1, 2, p. 157; am. 1989, ch. 64, § 4, p. 101, were repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

**§ 50-425. Affidavit voting of elector who moves to another precinct.  
[Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Another former § 50-425, which comprised **I.C., § 50-425**, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 1981, ch. 255, § 6.

**Compiler's Notes.**

This section, which comprised **I.C., § 50-425**, as added by 1989, ch. 64, § 5, p. 101, was repealed by S.L. 1998, ch. 240, § 2, effective July 1, 1998.



**§ 50-426. Change of name — Voting. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I. C., § 50-426**, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2002, ch. 75, § 1.

**§ 50-427. Challenges of entries in combination election record and poll book. [Repealed]**

Repealed by S.L. 2009, ch. 341, § 106, effective January 1, 2011.

**History.**

**I.C., § 50-427**, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 3, p. 157; am. 2002, ch. 75, § 6, p. 164.

**§ 50-428. Combination election record and poll book. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 106, effective January 1, 2011.

**History.**

**I.C., § 50-428**, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 7, p. 164.

**§ 50-429. General and special city elections. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 107, § 50-429 was amended and redesignated as § 50-405, effective January 1, 2011.

**§ 50-430. Method of nomination — Clerk to furnish printed forms.  
[Amended and Redesignated.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 108, § 50-430 was amended and redesignated as § 50-406, effective January 1, 2011.

**§ 50-431. Form of declaration of candidacy. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 109, § 50-431 was amended and redesignated as § 50-407, effective January 1, 2011.

**§ 50-432. Time and manner of filing declarations. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 110, § 50-432 was amended and redesignated as § 50-410, effective January 1, 2011.

**§ 50-433 — 50-434. Signatures on nominating petitions —  
Revocation of signature. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised I.C., § 50-433 and 50-434 as added by 1978, ch. 329, § 2, p. 825, were repealed by S.L. 2002, ch. 75, § 1.



**§ 50-435. Notice of candidate filing deadline. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-435, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2002, ch. 75, § 1.

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 111, another § 50-435 was amended and redesignated as § 50-411, effective January 1, 2011.

**§ 50-436. Notice of election — Contents — Publication.[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-436, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 11, p. 164; am. 2006, ch. 105, § 6, p. 288.

**§ 50-437. Official election stamp. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-437, as added by 1978, ch. 329, § 2, p. 825.

Idaho Code § 50-438

**§ 50-438. Ballots and election supplies. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-438, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-439. Preparation and contents of ballot. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-439, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 12, p. 164; am. 2006, ch. 105, § 7, p. 288.

**§ 50-440. Sample ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-440, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 13, p. 164; am. 2006, ch. 105, § 8, p. 288.

**§ 50-441. Procedure for correction of ballots after printing.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011..

**History.**

**I.C., § 50-441**, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-442. Voting by absentee ballot authorized. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-442, as added by 1978, ch. 329, § 2, p. 825.



**§ 50-443. Application for absentee ballot. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-443**, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 4, p. 157; am. 1996, ch. 74, § 2, p. 238; am. 2002, ch. 236, § 3, p. 707.

**§ 50-444. Classifications for absent elector's ballot. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-444**, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 5, p. 157, was repealed by S.L. 1998, ch. 240, § 4, effective July 1, 1998.

**§ 50-445. Issuance of absentee ballot. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-445, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 6, p. 157; am. 1996, ch. 74, § 3, p. 238; am. 1998, ch. 240, § 5, p. 797.

**§ 50-446. Marking and folding of absentee ballot — Affidavit.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-446**, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-447. Return of absentee ballot. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-447, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 7, p. 157; am. 2007, ch. 202, § 13, p. 620.

**§ 50-448. City clerks shall provide an absent elector's voting place.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-448**, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-449. Transmission of absentee ballots to polls. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-449, as added by 1978, ch. 329, § 2, p. 825; am. 2007, ch. 202, § 14, p. 620.

**§ 50-450. Deposit of absentee ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-450, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 8, p. 157.



Idaho Code § 50-451

**§ 50-451. Record of applications for absentee ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-451, as added by 1978, ch. 329, § 2, p. 825.

Idaho Code § 50-452

**§ 50-452. Duties of city clerk on election day. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-452, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-453. Opening and closing polls. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-453, as added by 1978, ch. 329, § 2, p. 825; am. 1987, ch. 2, § 1, p. 3; am. 1993, ch. 379, § 5, p. 1392; am. 1996, ch. 76, § 1, p. 242; am. 1998, ch. 240, § 6, p. 797.

**§ 50-454. Changing polling place — Proclamation and notice.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-454**, as added by 1978, ch. 329, § 2, p. 825.

Idaho Code § 50-455

**§ 50-455. Opening ballot boxes. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-455, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-456. Judges may administer oaths — Challenge of voters.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-456**, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-457. Enforcement duties of judge. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-457, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 9, p. 157.

**§ 50-458. Signing combination election record and poll book —  
Delivery of ballot to elector. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-458**, as added by 1978, ch. 329, § 2, p. 825; am. 2002, ch. 75, § 14, p. 164.



**§ 50-459. Manner of voting. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-459**, as added by 2006, ch. 105, § 10, p. 288; am. 2007, ch. 202, § 15, p. 620.

**STATUTORY NOTES**

**Prior Laws.**

A former § 50-459, which comprised **I.C., § 50-459**, as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 2006, ch. 105, § 10.

**§ 50-460. Assistance to voter. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-460, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 10, p. 157; am. 2010, ch. 235, § 36, p. 542.

Idaho Code § 50-461

**§ 50-461. Spoiled ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-461, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-462. Officers not to divulge information. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-462, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-463. Counting of votes. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-463**, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 11, p. 157; am. 1989, ch. 64, § 7, p. 101.

**§ 50-464. Comparison of poll lists and ballots — Void ballots.  
[Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

**I.C., § 50-464**, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 12, p. 157.

Idaho Code § 50-465

**§ 50-465. Counting of ballots. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-465, as added by 1978, ch. 329, § 2, p. 825.

**§ 50-466. Transmission of supplies to city clerk. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

**History.**

I.C., § 50-466, as added by 1978, ch. 329, § 2, p. 825.



**§ 50-467. Canvassing votes — Determining results of election.  
[Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 113, § 50-467 was amended and redesignated as § 50-412, effective January 1, 2011.

**§ 50-468. Tie votes. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 114, § 50-468 was amended and redesignated as § 50-413, effective January 1, 2011.

**§ 50-469. Failure to qualify creates vacancy. [Amended and Redesignated.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 115, § 50-469 was amended and redesignated as § 50-414, effective January 1, 2011.

**§ 50-470. Certificates of elections. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 116, § 50-470 was amended and redesignated as § 50-415, effective January 1, 2011.

**§ 50-471. Application for recount of ballots. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 117, § 50-471 was amended and redesignated as § 50-416, effective January 1, 2011.

**§ 50-472. Recall elections. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 118, § 50-472 was amended and redesignated as § 50-417, effective January 1, 2011.

**§ 50-473. Initiative and referendum elections. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 119, § 50-473 was amended and redesignated as § 50-418, effective January 1, 2011.

Idaho Code § 50-474

**§ 50-474. Voting by machine or vote tally system. [Repealed.]**

Repealed by S.L. 2009, ch. 341, § 120, effective January 1, 2011.

**History.**

I.C., § 50-474, as added by 1978, ch. 329, § 2, p. 825.



**§ 50-475. Election law violations. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 121, § 50-475 was amended and redesignated as § 50-419, effective January 1, 2011.

**§ 50-476. Adoption of state registration procedures — Joint registration. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 50-476 as added by 1978, ch. 329, § 2, p. 825, was repealed by S.L. 1993, ch. 379, § 3, effective January 1, 1994.

**§ 50-477. Application of campaign reporting law to elections in certain cities. [Amended and Redesignated.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Pursuant to S.L. 2009, ch. 341, § 122, § 50-477 was amended and redesignated as § 50-420, effective January 1, 2011. Section 50-420 is repealed by S.L. 2019, ch. 288, § 23, effective January 1, 2020.

**§ 50-478. Limitation of ballot access for multi-term incumbents.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised Init. Measure 1994, No. 2, § 3, p. 1371, was repealed by S.L. 2002, ch. 1, § 1.

**§ 50-479. Application of persuasive poll requirements. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-479**, as added by 2002, ch. 142, § 1, p. 393, was repealed by S.L. 2006, ch. 105, § 11.

Idaho Code Ch. 5

• [Title 50](#)», «[Ch. 5](#)»

Chapter 5  
INITIATIVE — REFERENDUM — RECALL

Sec.

50-501 — 50-517. [Repealed.]

## **§ 50-501. Initiative and referendum. [Repealed.]**

Repealed by S.L. 2015, ch. 285, § 3, effective July 1, 2015. For present comparable provisions, see § 34-1801B.

### **History.**

**I.C., § 50-501**, as added by 1977, ch. 144, § 2, p. 320; am. 1978, ch. 343, § 1, p. 882; am. 1993, ch. 313, § 14, p. 1157; am. 1997, ch. 352, § 1, p. 1041; am. 2013, ch. 135, § 12, p. 307.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-501, which comprised 1967, ch. 429, § 27A, p. 1249; am. 1973, ch. 80, § 1, p. 129, was repealed by S.L. 1977, ch. 144, § 1.

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.



**§ 50-502 — 50-517. Recall of officers. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections which comprised S.L. 1967, ch. 429, §§ 105-117, were repealed by S.L. 1972, ch. 283, § 2, p. 703. For law relating to recall of officers see § 34-1701 et seq.

Idaho Code Ch. 6

• [Title 50](#)», « [Ch. 6](#) »

## Chapter 6

### MAYOR

Sec.

50-601. Qualifications.

50-602. Mayor, administrative official.

50-603. Messages to council.

50-604. Special meetings of council.

50-605. Accounts and reports of officers.

50-606. Police powers of mayor.

50-607. General powers.

50-608. Vacancy in office of mayor.

50-609. Mayor may require aid in enforcing law.

50-610. Remission of fines. [Repealed.]

50-611. Veto power.

50-612. Majority required for election — Runoff election.

**§ 50-601. Qualifications.** — Any person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office.

The term of office of mayor shall be for a period of four (4) years except as otherwise specifically provided. He shall take office at the time and in the manner provided for installation of councilmen.

**History.**

1967, ch. 429, § 121, p. 1249; am. 2002, ch. 75, § 15, p. 164.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

**Cited** *City of Huetter v. Keene*, 150 Idaho 13, 244 P.3d 157 (2010).

**§ 50-602. Mayor, administrative official.** — The mayor, except as provided in sections 50-801 through 50-812[, Idaho Code], shall be the chief administrative official of the city, preside over the meetings of the city council and determine the order of business subject to such rules as the council may prescribe, have a vote only when the council is equally divided, have the superintending control of all the officers and affairs of the city, preserve order, and take care that the ordinances of the city and provisions of this act are complied with and enforced.

**History.**

1967, ch. 429, § 122, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Mayor may solemnize marriages, § 32-303.

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

The term “this act” near the end of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**CASE NOTES**

**Cited** [Buckalew v. City of Grangeville, 100 Idaho 460, 600 P.2d 136 \(1979\).](#)

**§ 50-603. Messages to council.** — The mayor shall, from time to time, communicate to the city council such information and recommend such measures as, in his opinion, may tend to the improvement of the finances, the protection, the health, the security, the ornament, the comfort, and the general welfare and prosperity of the city.

**History.**

1967, ch. 429, § 123, p. 1249.

**CASE NOTES**

Decisions Under Prior Law Appointment of Special Police.

Former similar section authorized the mayor to recommend the appointment of special police, but he had no authority himself to appoint them. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

**§ 50-604. Special meetings of council.** — The mayor shall have the power to call special meetings of the city council, the object of which shall be submitted to the council in writing; the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

**History.**

1967, ch. 429, § 124, p. 1249.

**§ 50-605. Accounts and reports of officers.** — The mayor shall have the power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make written reports pertaining to his office to the council.

**History.**

1967, ch. 429, § 125, p. 1249.



**§ 50-606. Police powers of mayor.** — The mayor shall have such jurisdiction as may be vested in him by ordinance over all places within five (5) miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, except taxation, within one (1) mile of the corporate limits of said city and over such properties as may be owned by the city without the corporate limits.

**History.**

1967, ch. 429, § 126, p. 1249.

**§ 50-607. General powers.** — The mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him by the city council, and shall have the power to administer oaths, and shall sign all contracts and conveyances in the name of and on behalf of the city.

**History.**

1967, ch. 429, § 127, p. 1249.

**CASE NOTES**

**Mandamus.**

Mandamus will lie if the officer against whom the writ is brought has a clear legal duty to perform the desired act, and if the act sought to be compelled is ministerial or executive in nature; thus, mandamus was a proper remedy to compel the mayor of a city to execute a public contract, since the signing of public contracts is authorized by this section. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

**Decisions Under Prior Law Appointment of Policemen.**

Under former similar section, mayor had no authority to appoint policemen upon his own motion or in a manner other than that provided in former section governing appointment of officers. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

**§ 50-608. Vacancy in office of mayor.** — In case of a temporary vacancy in the office of mayor due to absence or disability, the president of the council shall exercise the office of mayor during such disability or temporary absence, and until the mayor shall return. When a vacancy occurs in the office of mayor by reason of death, resignation or permanent disability, the city council shall fill the vacancy from within or without the council as may be deemed in the best interests of the city, which appointee shall serve until the next general city election, at which election a mayor shall be elected for the full four (4) year term.

**History.**

1967, ch. 429, § 128, p. 1249.

**§ 50-609. Mayor may require aid in enforcing law.** — The mayor is hereby authorized to call on every resident in the city over twenty-one (21) years of age to aid in enforcing the laws.

**History.**

1967, ch. 429, § 129, p. 1249; am. 2006, ch. 53, § 1, p. 164.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 53, substituted “resident” for “male inhabitant.”

**§ 50-610. Remission of fines. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1967, ch. 429, § 130, p. 1249, was repealed by S.L. 1970, ch. 63, § 1, p. 152, effective at 12:01 a.m. on January 11, 1971.

**§ 50-611. Veto power.** — The mayor shall have power to veto or sign any ordinance passed by the city council; provided, that any ordinance vetoed by the mayor may be passed over his veto by a vote of one-half (1/2) plus one (1) of the members of the full council, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become law without his signature.

**History.**

1967, ch. 429, § 131, p. 1249.

**CASE NOTES**

**Decisions Under Prior Law Right to Legislate.**

Former similar section expressly conferred upon city council right to legislate on behalf of city. Such power was nowhere vested in mayor except by virtue of his veto power. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209 (1909).

**§ 50-612. Majority required for election — Runoff election.** — A city may, by ordinance, provide that a majority of the votes for any candidate running for the office of mayor shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff election shall be conducted by the county clerk as in the general election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time, within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-405, Idaho Code. The ballot shall be prepared by the county clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the county commissioners not less than twenty (20) days preceding any runoff election and sample ballots shall be printed not less than eighteen (18) days preceding the runoff election.

### **History.**

I.C., § 50-612, as added by 1985, ch. 209, § 1, p. 518; am. 1992, ch. 176, § 5, p. 553; am. 2002, ch. 75, § 16, p. 164; am. 2006, ch. 105, § 12, p. 288; am. 2009, ch. 341, § 123, p. 993.

## **STATUTORY NOTES**

### **Amendments.**

The 2006 amendment, by ch. 105, substituted the present last two sentences for the former last sentence which read: “The first notice of election shall be made by the city clerk not less than twenty (20) days next preceding any runoff election, and the designation of polling places shall be made by the city clerk not less than twenty (20) days next preceding any runoff election”.

The 2009 amendment, by ch. 341, in the third sentence, inserted “by the county clerk” and “consistent with chapter 14, title 34, Idaho Code,” and updated the last section reference; in the fourth sentence, substituted

“county clerk” for “city clerk”; and, in the last sentence, substituted “county commissioners” for “city clerk.”

**Effective Dates.**

Section 2 of S.L. 1985, ch. 209 declared an emergency. Approved March 21, 1985.

Section 7 of S.L. 1992, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1994, except that the provisions of Section 6 [appropriation] of this act shall be in full force and effect on and after July 1, 1992.”

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.





## Chapter 7

### COUNCIL

Sec.

50-701. Composition — Powers.

50-702. Qualification of councilmen — Terms — Installation.

50-703. Change in number of councilmen.

50-704. Vacancies — Appointment.

50-705. Meetings of council — Quorum — Discipline.

50-706. Special meetings of council.

50-707. Assignment of council seats.

50-707A. Election of councilmen by districts.

50-707B. Majority may be required for election — Runoff election.

50-708. Examination of accounts of fiscal officers.

**§ 50-701. Composition — Powers.** — The legislative authority of each city in the state of Idaho, except those operating under the provisions of section [sections] 50-801 through 50-812[, Idaho Code,] shall be vested in a council consisting of either four (4) or six (6) members, one half (1/2) of whom shall be elected at each general city election. Councils shall have such powers and duties as are now or may hereafter be provided under the general laws of the state of Idaho.

**History.**

1967, ch. 429, § 132, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Annual appropriations, § 50-1003.

Annual audit of city finances, § 50-1010.

Annual budget, § 50-1002.

Certification of taxes to be collected by tax collector, § 50-1007.

No power to draw on funds without appropriation, § 50-1006.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1-46, inclusive, and chs. 48, 49, of tit. 50.

**Compiler's Notes.**

The first bracketed insertion in the section was added by the compiler to correct the enacting legislation.

The second bracketed insertion was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

## CASE NOTES

**Cited** Federated Publications, Inc. v. Boise City, 128 Idaho 459, 915 P.2d 21 (1996).

**§ 50-702. Qualification of councilmen — Terms — Installation. —**

Any person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho. Each councilman elected at a general city election, except as otherwise specifically provided, shall hold office for a term of four (4) years, and until his successor is elected and qualified. Councilmen elected at each general city election shall be installed at the first meeting in January following election. The manner of conducting that meeting shall be as herein set forth and not otherwise: the incumbents shall meet and conduct such business as may be necessary to conclude the fiscal matters of the preceding year; the newly elected shall then subscribe to the oath of office, be presented certificates of election, assume the duties of their position, and conduct such business as may be necessary, one (1) item of which shall be the election of a member as president of the council.

**History.**

1967, ch. 429, § 133, p. 1249; am. 2002, ch. 75, § 17, p. 164.

**CASE NOTES**

**Cited** *City of Huetter v. Keene*, 150 Idaho 13, 244 P.3d 157 (2010).

**§ 50-703. Change in number of councilmen.** — (1) Any city may change to the greater or lesser number of councilmen after an election instituted by resolution of the council or by petition as provided for initiative in chapter 18, title 34, Idaho Code. When the proposition submitted to the electors shall receive a favorable vote, officials shall be elected at the succeeding general city election, provided however, that should such election be conducted in a year when no general city election is to be held, such new positions shall be filled by appointment within thirty (30) days.

(a) When the number of councilmen to be elected is to be reduced from six (6) to four (4), there shall be elected one (1) councilman to serve a term of four (4) years. At the next succeeding general city election, there shall be elected two (2) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

(b) When the number of councilmen to be elected is to be increased from four (4) to six (6), there shall be elected three (3) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

(2) Any city operating under the city manager form of government may change to the greater or lesser number of councilmen after an election instituted under subsection (1).

(a) When the number of councilmen to be elected is to be reduced from seven (7) to five (5):

(i) If there are four (4) councilmen up for election at the next general city election, there shall be elected two (2) councilmen, each to serve a term of four (4) years.

(ii) If there are three (3) councilmen up for election at the next general city election, there shall be elected one (1) councilman, to serve a term of four (4) years. At the next succeeding general city election, there shall be elected three (3) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

(b) When the number of councilmen to be elected is to be increased from five (5) to seven (7):

(i) If there are two (2) councilmen up for election at the next general city election, there shall be elected four (4) councilmen, each to serve a term of four (4) years.

(ii) If there are three (3) councilmen up for election at the next general city election, there shall be elected four (4) councilmen, each to serve a term of four (4) years, and one (1) councilman to serve a term of two (2) years.

**History.**

1967, ch. 429, § 134, p. 1249; am. 1972, ch. 16, § 1, p. 21; am. 2018, ch. 169, § 17, p. 344.

**STATUTORY NOTES**

**Cross References.**

City manager form of government, § 50-801 et seq.

**Amendments.**

The 2018 amendment, by ch. 169, redesignated former subsections A. and B. as subsections (1) and (2), and in subsection (2), redesignated former paragraphs (a)1. and (a)2. as paragraphs (a)(i) and (a)(ii) and paragraphs (b)1. and (b)2. as paragraphs (b)(i) and (b)(ii); and substituted “chapter 18, title 34, Idaho Code” for “[sections 50-502 through 50-517, Idaho Code](#), such election to be held not less than sixty (60) days before any general city election” in the introductory paragraph of subsection (1).

**§ 50-704. Vacancies — Appointment.** — A vacancy on the council shall be filled by appointment made by the mayor with the consent of the council, which appointee shall serve only until the next general city election, at which such vacancy shall be filled for the balance of the original term.

**History.**

1967, ch. 429, § 135, p. 1249.

**CASE NOTES**

**Disclosure of Names and Resumes of Applicants.**

Because a member of a city council is a local governmental official, not an employee, the name and resume of an applicant to be appointed to a city council are not exempt from disclosure; city was required to disclose names and resumes of applicants for city council to publisher requesting records. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996).



**§ 50-705. Meetings of council — Quorum — Discipline.** — Regular meetings of the city council shall be held each month at such place and times as the council may establish by ordinance. At all meetings of the council a majority of the full council shall constitute a quorum for the transaction of business; unless otherwise provided by law, a question before the council shall be decided by a majority of the members present.

For the purpose of holding regular or special meetings a number less than a majority may compel the attendance of absent members in such manner and under such penalties as the council may, by ordinance, have previously prescribed. Regular or special meetings of the council may be recessed until further notice.

**History.**

1967, ch. 429, § 136, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Open public meetings, § 74-201 et seq.

Compelling attendance of witnesses before council, § 50-216.

**RESEARCH REFERENCES**

**ALR.** — Abstention from voting of member of municipal council present at session as affecting requisite voting majority. [63 A.L.R.3d 1072](#).

**§ 50-706. Special meetings of council.** — One half (1/2) plus one (1) of the members of the full council shall have the power to call special meetings of the city council, the object of which shall be submitted to the council in writing; the call and object, as well as the disposition thereof, shall be entered upon the journal of the clerk.

**History.**

1967, ch. 429, § 137, p. 1249.

**CASE NOTES**

**Cited** *Buckalew v. City of Grangeville*, 97 Idaho 168, 540 P.2d 1347 (1975).

Decisions Under Prior Law [Entry on journal](#).

[Notice](#).

**[Entry on Journal](#).**

Entry made by city clerk upon journal at special meeting setting forth that call for special meeting was made and its object and action taken by council at such meeting was sufficient compliance with former similar section. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

**[Notice](#).**

Where there was a special meeting of city council and mayor and all councilmen except one were present, any business could have been transacted that did not incur an indebtedness, although call for meeting was not made in writing as required by former similar section. *Sommercamp v. Kelly*, 8 Idaho 712, 71 P. 147 (1902).

Former similar section evidently contemplated that all members of the council could have been found within the city. It was unnecessary to give notice to a member of a special meeting when he was at the time absent from the state or county and could not be notified of the time, and, if notified, could not reach the place of meeting in time for the meeting. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

Former similar section did not require a written notice to be served on the members of the council. It did require that the object of the meeting should have been submitted to the council in writing. *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908).

**§ 50-707. Assignment of council seats.** — Any city, by ordinance, may assign a number to each council seat. Upon the adoption of such an ordinance, and at least one hundred twenty (120) days prior to the next general election, the city clerk shall assign a number for each council seat. Any candidate seeking election to the council shall file for one (1) of the assigned council seats.

**History.**

I.C., § 50-707, as added by 1984, ch. 108, § 1, p. 250.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-707, which comprised S.L. 1967, ch. 429, § 138, p. 1249, was repealed by S.L. 1969, ch. 255, § 6.

**§ 50-707A. Election of councilmen by districts.** — (1) Any city having fewer than one hundred thousand (100,000) inhabitants based upon the most recent federal decennial census may, by ordinance, provide for districts and the election of councilmen by districts. Upon the adoption of such an ordinance and at least one hundred twenty (120) days prior to each general election, the governing body of the city shall establish the territory of council districts in accordance with this section. Any city having more than one hundred thousand (100,000) inhabitants based upon the most recent federal decennial census shall establish districts and shall elect councilmen by districts for districts so established. Districts shall be established no later than one hundred twenty (120) days prior to the general election following the date that election precincts are established pursuant to the provisions of section 34-301, Idaho Code.

(2) Each district shall consist of one (1) or more contiguous election precincts as established pursuant to the provisions of chapter 3, title 34, Idaho Code, and each district shall, to the nearest extent possible, contain the same number of people based upon the most recent federal decennial census.

(3) Each city establishing districts for the election of councilmen by districts shall establish the number of districts corresponding to the number of council seats determined by the city pursuant to [section 50-701, Idaho Code](#), or for any city having a governing body governed by the provisions of [sections 50-801 through 50-812, Idaho Code](#), the number of council seats determined by the city pursuant to [section 50-805, Idaho Code](#).

(4) Upon establishment of city election districts, council members are to be elected by the electors of the said geographic district, and any candidate must be a resident of said geographic district. For cities with fewer than one hundred thousand (100,000) inhabitants that establish districts by ordinance, the council shall determine, not less than ninety (90) days before the next general election, the method of the implementation of this ordinance.

**History.**

I.C., § 50-707A, as added by 1984, ch. 108, § 2, p. 250; am. 2020, ch. 269, § 1, p. 781.

## STATUTORY NOTES

### **Amendments.**

The 2020 amendment, by ch. 269, rewrote the section to the extent that a detailed comparison is impracticable.

**§ 50-707B. Majority may be required for election — Runoff election.**

— A city may, by ordinance, provide that a majority of the votes for any candidate running for a council seat adopted by a city in accordance with section 50-707 or 50-707A, Idaho Code, shall be required for election to that office. In the event no candidate receives a majority of the votes cast, there shall be a runoff election between the two (2) candidates receiving the highest number of votes cast. Such runoff election shall be conducted by the county clerk as in the general election in a manner consistent with chapter 14, title 34, Idaho Code, and at such time within thirty (30) days of the general election, as prescribed by the city and shall be exempt from the limitation upon elections provided in sections 34-106 and 50-405, Idaho Code. The ballot shall be prepared by the county clerk not less than twenty-two (22) days preceding the runoff election. The designation of polling places shall be made by the county commissioners not less than twenty (20) days preceding any runoff election, and sample ballots shall be printed not less than eighteen (18) days preceding the runoff election.

**History.**

**I.C., § 50-707B**, as added by 1984, ch. 108, § 3, p. 250; am. 2002, ch. 75, § 18, p. 164; am. 2006, ch. 105, § 13, p. 288; am. 2009, ch. 341, § 124, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 105, substituted “shall be required” for “may be required” in the first sentence, and substituted the present last two sentences for the former last sentence which read: “The first notice of election shall be made by the city clerk not less than twenty (20) days next preceding any runoff election, and the designation of polling places shall be made by the city clerk not less than twenty (20) days next preceding any runoff election.”

The 2009 amendment, by ch. 341, in the third sentence, inserted “by the county clerk” and “consistent with chapter 14, title 34, Idaho Code,” and

updated the last section reference; in the fourth sentence, substituted “county clerk” for “city clerk”; and, in the last sentence, substituted “county commissioners” for “city clerk.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-708. Examination of accounts of fiscal officers.** — At least once in each quarter of each year, the council shall examine by review of a quarterly treasurer's report included upon the city council agenda the accounts and doings subject to management by the chief financial officer of the city. Such report shall be completed no more than thirty (30) days after the end of each calendar quarter and shall then be transmitted to the city clerk for inclusion on the next available city council agenda.

**History.**

1967, ch. 429, § 139, p. 1249; am. 2017, ch. 129, § 2, p. 303.

**STATUTORY NOTES**

**Amendments.**

The 2017 amendment, by ch. 129, rewrote the section, which formerly read: "At least once in each quarter of each year, the council shall examine, either in open session or by committee, the accounts and doings of all officers or other persons having the care, management or disposition of moneys, property or business of the city".

**Compiler's Notes.**

Section 4 of S.L. 2017, ch. 129 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act".

Idaho Code Ch. 8

• [Title 50](#)», « [Ch. 8](#) »

## Chapter 8

### COUNCIL-MANAGER PLAN

Sec.

50-801. Cities may adopt plan.

50-802. Instituting election, petition — Resolution.

50-803. Time for holding special election on proposition.

50-804. Proposition to be voted.

50-805. Governing body — Size.

50-806. Election of officials following adoption — Determining successful candidates — Designation of seats.

50-807. Effective date following adoption of plan.

50-808. Powers — Duties of the council.

50-809. Mayor.

50-810. Powers of the mayor.

50-811. City manager — Duties.

50-812. Discontinuance of council-manager plan — Proposition to be voted.

50-813. Calculation for number of required signatures.

**§ 50-801. Cities may adopt plan.** — Any city within the state of Idaho, organized under the general laws of the state, special chapter, or a general incorporation act, may adopt the council-manager plan of government by proceedings as herein provided.

**History.**

1967, ch. 429, § 140, p. 1249; am. 1984, ch. 156, § 1, p. 381.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**§ 50-802. Instituting election, petition — Resolution.** — Procedure for instituting a special election on adoption of the council-manager plans shall be by petition of electors as provided for initiative in section 34-1801B, Idaho Code, or by resolution passed by one-half (1/2) plus one (1) of the members of the full council.

**History.**

1967, ch. 429, § 141, p. 1249; am. 1984, ch. 156, § 2, p. 381; am. 2015, ch. 285, § 4, p. 1155.

**STATUTORY NOTES**

**Amendments.**

The 2015 amendment, by ch. 285, substituted “section 34-1801B” for “section 50-501”.

**§ 50-803. Time for holding special election on proposition.** — Within ten (10) days after the filing of such petition or resolution with the city clerk, the mayor shall, by proclamation, establish a date for holding a special election on the question of adopting the council-manager plan, such date to be determined as follows:

(1) When the petition or resolution is filed with the city clerk during a year when no general city election is to be held, such election shall be held on the date authorized in [section 34-106, Idaho Code](#), that is nearest to but not less than sixty (60) days following filing of such petition or resolution;

(2) When the petition or resolution is filed with the city clerk during a year when a general city election is to be held, such election shall be held on the date for holding general city elections.

#### **History.**

1967, ch. 429, § 142, p. 1249; am. 1984, ch. 156, § 3, p. 381; am. 2009, ch. 341, § 125, p. 993.

### **STATUTORY NOTES**

#### **Amendments.**

The 2009 amendment, by ch. 341, in subsection (1), substituted “shall be held on the date authorized in [section 34-106, Idaho Code](#), that is nearest to but not less than sixty (60) days following filing” for “shall be held within sixty (60) days following filing”; and, in subsection (2), substituted “shall be held on the date” for “shall be held not less than sixty (60) days prior to the date.”

#### **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-804. Proposition to be voted.** — At such election the proposition to be submitted to the electors shall be: “Shall the City of . . . . adopt the council-manager plan of government, as set forth in sections 50-801 through 50-812, Idaho Code?”

**History.**

1967, ch. 429, § 143, p. 1249; am. 1984, ch. 156, § 4, p. 381.

**§ 50-805. Governing body — Size.** — The governing body of any city governed by the provisions of sections 50-801 through 50-812[, Idaho Code,] shall consist of five (5) or seven (7) councilmen. Should the proposition be adopted under section 50-804[, Idaho Code], the governing body shall consist of a council equal in number to the councilmen plus the mayor under the existing form of government, unless subsequently changed as provided by section 50-703[, Idaho Code].

**History.**

1967, ch. 429, § 144, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions in three places were added by the compiler to conform to correct the statutory citation style.



**§ 50-806. Election of officials following adoption — Determining successful candidates — Designation of seats.** — (1) When the proposition is submitted to the electors under section 50-803(1), Idaho Code, officials shall be elected at the same election during which the proposition is submitted to the voters; when the proposition submitted to the electors under subsection (2) of section 50-803, Idaho Code, officials shall be elected at the same general city election. If any proposition submitted to the electors under section 50-803, Idaho Code, fails to receive a favorable vote, the election of officials at the same election shall be declared null and void.

Determination of successful candidates at either a special or general election shall be as herein provided: A. When the council is to consist of five (5) members, the three (3) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and two (2) to serve two (2) year terms or so much thereof as remains; B. When the council is to consist of seven (7) members, the four (4) receiving the largest number of votes shall be declared elected to serve four (4) year terms or so much thereof as remains, and three (3) to serve two (2) year terms or so much thereof as remains. At each general city election thereafter, councilmen shall be elected to fill the unexpired terms.

(2) By ordinance, the city may assign a number to each council seat. In that event candidates will file for a designated seat and the candidate receiving the largest number of votes for the seat he has filed for shall be declared elected.

### **History.**

1967, ch. 429, § 145, p. 1249; am. 1981, ch. 158, § 1, p. 270; am. 2009, ch. 341, § 126, p. 993.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 341, rewrote the first paragraph in subsection (1), which formerly read: “When the proposition submitted to

the electors under section 50-803, subsection (1), Idaho Code, received a favorable vote, officials shall be elected at a special election, called for that purpose, to be held not more than sixty (60) days following the date on which the proposition was submitted to the voters; when the proposition submitted to the electors under subsection (2) received a favorable vote, officials shall be elected at the succeeding general city election.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-807. Effective date following adoption of plan.** — The effective date of the council-manager plan shall be not more than seventy-five (75) days following the election of officials, to be determined by the incumbent council.

**History.**

1967, ch. 429, § 146, p. 1249; am. 1984, ch. 156, § 5, p. 381.

**§ 50-808. Powers — Duties of the council.** — The council shall have all powers delegated under general law, appoint a chief administrative officer to be known as the city manager, and confirm all appointments of department heads made by the city manager.

**History.**

1967, ch. 429, § 147, p. 1249.

**§ 50-809. Mayor.** — (1) At the time of installing and swearing in the councilmen following each general city election, or special election called for the purpose of electing officials, the council shall elect one (1) of their members to be designated the mayor. He shall serve for a period of two (2) years unless sooner removed by the council or becomes disqualified.

(2) By ordinance, a city may provide for the direct election of the mayor by the voters. When direct election is permitted, the mayor's position on the ballot shall replace that of one (1) councilman. Prior to the opening of the filing for candidacy for mayor, the term of the direct elected mayor shall be designated, by ordinance, as two (2) years or four (4) years. The direct elected mayor shall have no changes in his powers as defined in [section 50-810, Idaho Code](#).

**History.**

1967, ch. 429, § 148, p. 1249; am. 1975, ch. 203, § 1, p. 564.

**§ 50-810. Powers of the mayor.** — The mayor shall preside at the meetings of the council and perform such other duties consistent with his office as may be imposed by the council. He shall be entitled to a vote on all matters coming before the council, but shall possess no veto power. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts of [for] the purposes of serving civil processes, and by the governor for military purpose. He may use the title of mayor in any case in which the execution of contracts or other legal instruments in writing, or other necessity arising from the general laws of this state may so require, but this shall not be construed as conferring upon him administrative powers or functions of a mayor under the general laws of the state.

**History.**

1967, ch. 429, § 149, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the third sentence was added by the compiler to correct the enacting legislation.

**§ 50-811. City manager — Duties.** — The council shall appoint a city manager to be the administrative head of the city government under the direction and supervision of such council and who shall hold office at the pleasure of the majority of the members thereof. Before entering upon the duties of his office, such city manager shall take the official oath for the support of the government and the faithful performance of his duties, and shall execute a bond in favor of the city in such sum as may be fixed by the council. He shall:

1. Have general supervision over the business of the city.
2. See that the ordinances and policies of the city are complied with and faithfully executed.
3. Attend all meetings of the council at which his attendance is required by that body.
4. Recommend for adoption to the council such measures as he may deem necessary or expedient.
5. Make the appointment of all department heads, subject to such civil service regulations as may relate thereto.
6. Prepare and submit to the council such reports as may be required by that body, or as he may deem advisable.
7. Keep the council fully advised of the financial condition of the city and its future needs.
8. Prepare and submit to the council a tentative budget for the next fiscal year.
9. Perform such other duties as the council may establish by ordinance or resolution.
10. Possess such powers as are vested in the mayor as provided in section 50-606[, Idaho Code].

**History.**

1967, ch. 429, § 150, p. 1249.

## STATUTORY NOTES

### **Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

## CASE NOTES

### **Policy Decisions.**

The decision to file a lawsuit is not a ministerial or administrative decision but is a policy decision that must be made by the governing board pursuant to the open meeting laws, and the city manager is appointed by the city council as the administrative head of the city government under the direction and supervision of such council, not as the city's policymaker. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).



**§ 50-812. Discontinuance of council-manager plan — Proposition to be voted.** — Any city which shall have operated for more than six (6) years under the provisions of sections 50-801 through 50-812, Idaho Code, may resume operation under sections 50-601 through 50-708, Idaho Code, by proceedings held as sections 50-801 through 50-812, Idaho Code, provide for adoption of the council-manager plan. The proposition to be submitted shall be: “Shall the City of . . . . retain its organization under the “council-manager plan’ ?”

**History.**

1967, ch. 429, § 151, p. 1249; am. 1984, ch. 156, § 6, p. 381.

**§ 50-813. Calculation for number of required signatures.** — In cases where a city is operating under the council-manager plan, if there is no direct mayoral election, and a statute provides for petitions or elections based upon the total number of votes cast for mayor at the last preceding city election, the calculation of signatures or votes necessary under state law shall be based upon the total number of votes cast for the city councilman who received the highest number of votes at the last preceding city election.

**History.**

I.C., § 50-813, as added by 1978, ch. 257, § 1, p. 562; am. 1984, ch. 156, § 7, p. 381.



## Chapter 9

### ORDINANCES — CITY CODE — RECORDS

Sec.

50-901. Ordinances — Style — Publication — When effective — Immediate operation in emergencies.

50-901A. Summarization of ordinances permitted — Requirements.

50-902. Passage of ordinances.

50-903. Grant of power.

50-904. Arrangement of ordinances.

50-905. Repeal of conflicting provisions.

50-906. Publication in book or pamphlet form.

50-907. Classification and retention of municipal records.

50-908. Designation, powers and responsibilities of municipal records management officers — Duties of city officials concerning records.

50-909. Retention of city records using photographic and digital media.  
[Repealed.]

50-910. Photographic or digital retention of city records. [Repealed.]

**§ 50-901. Ordinances — Style — Publication — When effective — Immediate operation in emergencies.** — The style of all ordinances shall be: “Be it ordained by the mayor and council of the city of .....” and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that in cases of riot, infections or contagious disease, or other impending danger requiring immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; provided further, that nationally recognized codes such as, but not limited to, those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as, but not limited to, those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by a city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided further, that at least one (1) copy of the supplemental code, duly certified by the city clerk, shall have been filed for use and examination by the public in the office of the clerk of the city prior to the adoption of the ordinance by the city council. Following its adoption by the city, one (1) copy of the supplemental code shall be retained by the city, which shall be filed in the office of the city clerk.

### **History.**

1967, ch. 429, § 152, p. 1249; am. 1971, ch. 9, § 1, p. 20; am. 1979, ch. 19, § 1, p. 29; am. 1981, ch. 145, § 1, p. 249; am. 1982, ch. 66, § 1, p. 130; am. 2001, ch. 156, § 1, p. 563.

### **STATUTORY NOTES**

## **Cross References.**

Open public meetings, §§ 74-201 et seq.

General power to enact ordinances, § 50-302.

## **Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

## **Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

Section 2 of S.L. 1971, ch. 9, provided that the act should be in full force and effect on and after July 1, 1971.

## **CASE NOTES**

### **Decisions Under Prior Law Style.**

Provision relating to style was directory and enacting clause of the village ordinance as follows: “Be it ordained by the town of Post Falls,” was sufficient, as such enacting clause indicated intention and declaration of village to legislate. *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 333 (1909).

## **RESEARCH REFERENCES**

**ALR.** — Validity and construction of statute or ordinance prohibiting desecration of church. 90 A.L.R.3d 1128.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals. 1 A.L.R.4th 994.

Validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 A.L.R.4th 922.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance, modern status. 11 A.L.R.4th 399.

Construction of provisions of statute or ordinance governing occasion, time or manner of summary destruction of domestic animals by public authorities. [46 A.L.R.4th 839](#).

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as pit bulls or bull terriers. [80 A.L.R.4th 70](#).

**§ 50-901A. Summarization of ordinances permitted — Requirements.** — (1) In lieu of publishing the entire ordinance under section 50-901, Idaho Code, the city may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

(a) The name of the city; (b) The formal identification or citation number of the ordinance; (c) A descriptive title; (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date; (e) Any other information necessary to provide an accurate summary; and (f) A statement that the full text is available at the city hall.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains legal descriptions, or contains provisions regarding taxation or penalties concerning real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering one or more street addresses, the street addresses of the corners of the area described shall meet this requirement. Maps may be substituted for written legal description of property provided they contain sufficient detail to clearly define the area with which the ordinance is concerned.

(3) Before submission of a summary to a newspaper for publication under this section, the legal advisor of the city shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

(4) The full text of any ordinance which is summarized by publication under this section shall be promptly provided by the city clerk to any citizen on personal request.

**History.**



I.C., § 50-901A, as added by 1979, ch. 19, § 2, p. 29; am. 1981, ch. 145, § 2, p. 249.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 3 of S.L. 1981, ch. 145 declared an emergency. Approved March 27, 1981.

**§ 50-902. Passage of ordinances.** — The passage or adoption of every ordinance, and every resolution or order to enter a contract shall be by roll call of the council with the yea or nay of each being recorded, and to pass or adopt any ordinance or any such resolution or order, a majority of the council shall be required.

Ordinances shall be read on three (3) different days, two (2) readings of which may be by title only and one (1) reading of which shall be in full, unless one half (1/2) plus one (1) of the members of the full council shall dispense with the rule. In preparation, passage and publication, ordinances shall contain no subject which shall not be clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless all ordinances, which are intended to amend existing ordinances, shall have the words which are added to such ordinance underlined; when the amendment is to strike out or repeal any part of an existing ordinance, the letter, figure, word or words stricken or repealed shall be printed with a line through such letter, figure, word or words in the printed bill to indicate the part stricken or repealed. Provided, however, that when an ordinance includes or consists of the repeal of an entire section or chapter, it shall not be necessary to print such repealed section or chapter.

All ordinances may be proved by a certificate of the clerk under the seal of the city and when printed or published individually in book or pamphlet form by authority of the city, shall be read and received in evidence in all courts and places without further proof.

**History.**

1967, ch. 429, § 153, p. 1249; am. 1972, ch. 18, § 1, p. 24.

**CASE NOTES**

Judicial notice.

Resolution.

**Judicial Notice.**

Existence of an ordinance relevant to adjudication of a dispute is a question well-suited to the application of I.R.E. 201, and if an ordinance's existence is not reasonably in dispute because it is generally known within the territorial jurisdiction of the trial court, or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, then it may be accepted as evidence by judicial notice. *Doe v. Doe*, 146 Idaho 386, 195 P.3d 745 (Ct. App. 2008).

### **Resolution.**

The clerk of the city council testified that a motion authorizing the lease of former hospital to state for use as correctional facility was presented at the December 20, 1989, meeting of the city council and that the city council took a final vote at that time. The trial court concluded that the oral motion made and passed by the city council amounted, in substance, to a "resolution" within the meaning of this section prior to execution of the lease. The trial court did not abuse its discretion in admitting the copy of the resolution into evidence. *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992).

**Cited** *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992).

## Decisions Under Prior Law

### **Amendments.**

### **Ratification of contracts.**

### **Repeals.**

### **Titles.**

### **Amendments.**

Amendatory ordinance which purported to amend ordinance by inserting therein particular language without indicating where such insertion shall be made, or containing entire ordinance as amended, or particular section amended, was void. *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 333 (1909).

### **Ratification of contracts.**

Contract made by city council in an emergency without full compliance with former similar section was held to have been ratified by later

allowance of claim thereon. *Rice v. Gwinn*, 5 Idaho 394, 49 P. 412 (1897).

### **Repeals.**

Ordinance could be repealed only in pursuance of same method required for its enactment. *Beem v. Davis*, 31 Idaho 730, 175 P. 959 (1918).

### **Titles.**

It was sufficient if title in its general scope clearly expressed object and purpose of such ordinance. *Village of St. Anthony v. Brandon*, 10 Idaho 205, 77 P. 322 (1904); *Best v. Broadhead*, 18 Idaho 11, 18 Idaho 16, 108 P. 335 (1909).

Title of ordinance was held sufficient. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

**§ 50-903. Grant of power.** — Any city is hereby empowered to revise, codify, and compile from time to time and to publish in book or pamphlet form all ordinances of such city of a general and permanent nature and to make such changes, alterations, modifications, additions and substitutions therein as it may deem best to the end that a complete simplified code of such ordinances then in force shall be presented, but with errors, inconsistencies, repetitions and ambiguities therein eliminated.

**History.**

1967, ch. 429, § 154, p. 1249.

**§ 50-904. Arrangement of ordinances.** — The ordinances in such revision, codification and compilation shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signatures of the mayor, attestations and other formal parts.

**History.**

1967, ch. 429, § 155, p. 1249.

**§ 50-905. Repeal of conflicting provisions.** — Such revision shall be by one (1) ordinance embracing all ordinances of a general and permanent nature preserved as changed or added to and perfected by such revision, codification and compilation and shall be a repeal of all ordinances in conflict with such revision, codification and compilation, but all ordinances then in force shall continue in force after such revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor. The only title necessary for such ordinance shall be “An ordinance for revising, codifying and compiling the general ordinances of the city of . . . . .”

**History.**

1967, ch. 429, § 156, p. 1249.

**§ 50-906. Publication in book or pamphlet form.** — Such ordinances when so revised, codified, compiled and published in book or pamphlet form by authority of the city need not be printed or published in any other manner.

**History.**

1967, ch. 429, § 157, p. 1249.



**§ 50-907. Classification and retention of municipal records. — (1)**  
“Permanent records” shall consist of:

- (a) Adopted meeting minutes of the city council and city boards and commissions;
- (b) Ordinances and resolutions;
- (c) Building plans and specifications for commercial projects and government buildings;
- (d) Fiscal year-end financial reports;
- (e) Records affecting the title to real property or liens thereon;
- (f) Cemetery records of lot ownership, headstone inscriptions, interment, exhumation and removal records, and cemetery maps, plot plans and surveys;
- (g) Poll books, excluding optional duplicate poll books used to record that the elector has voted, tally books, sample ballots, campaign finance reports, declarations of candidacy, declarations of intent, and notices of election; and
- (h) Other documents or records as may be deemed of permanent nature by the city council.

Permanent records shall be retained by the city in perpetuity, or may be transferred to the Idaho state historical society’s permanent records repository upon resolution of the city council.

(2) “Semipermanent records” shall consist of:

- (a) Claims, canceled checks, warrants, duplicate warrants, purchase orders, vouchers, duplicate receipts, utility and other financial records;
- (b) Contracts;
- (c) Building applications for commercial projects and government buildings;
- (d) License applications;

- (e) Departmental reports;
- (f) Bonds and coupons; and
- (g) Other documents or records as may be deemed of semipermanent nature by the city council.

Semipermanent records shall be kept for not less than five (5) years after the date of issuance or completion of the matter contained within the record.

(3) “Temporary records” shall consist of:

- (a) Building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval;
- (b) Cash receipts subject to audit;
- (c) Election ballots and duplicate poll books; and
- (d) Other documents or records as may be deemed of temporary nature by the city council.

Temporary records shall be retained for not less than two (2) years, but in no event shall financial records be destroyed until completion of the city’s financial audit as provided in [section 67-450B, Idaho Code](#).

(4) “Historical records” shall consist of records which, due to age or cultural significance, are themselves artifacts of historical value. Historical records have enduring value based on the administrative, legal, fiscal, evidential or historical information they contain. Historical records shall be retained by the city in perpetuity or may be transferred to the Idaho state historical society’s permanent records repository pursuant to subsections 8. and 9. of [section 67-4126, Idaho Code](#), upon resolution of the city council.

(5) Each city council shall adopt by resolution a records retention schedule, listing the various types of city records and the retention period for each type of record.

(6) The city may reproduce, retain and manage records in a photographic, digital or other nonpaper medium. The medium in which a document is retained shall accurately reproduce the record in paper form during the period for which the document must be retained and shall preclude unauthorized alteration of the document.

(a) If the medium chosen for retention is photographic, all film used must meet the quality standards of the American national standards institute (ANSI).

(b) If the medium chosen for retention is digital, the medium must provide for reproduction on paper at a resolution of at least two hundred (200) dots per inch.

(c) A record retained by the city in any form or medium permitted under this section shall be deemed an original public record for all purposes. A reproduction or copy of such record, certified by the city clerk, shall be deemed to be a transcript or certified copy of the original and shall be admissible before any court or administrative hearing.

(d) Once a semipermanent or temporary record is retained in a nonpaper medium as authorized by this section:

(i) The original paper document shall be considered a duplicate of the record, and may be summarily disposed of or returned to the sender; and

(ii) The provisions of this section related to retention and destruction of semipermanent and temporary records shall apply only to the record retained in the nonpaper medium.

(e) Once a permanent record is retained in a nonpaper medium as authorized by this section:

(i) The original paper document shall be considered a copy of the record and may be destroyed after compliance with the provisions of this subparagraph. Prior to destruction of original paper documents, the city clerk shall provide written notice, either by electronic or physical delivery, including a detailed list of the documents proposed for destruction to the Idaho state historical society. The Idaho state historical society shall have thirty (30) days after receipt of the notice to review the list and respond in writing, either by electronic or physical delivery, to the city clerk identifying any documents that will be requested to be transferred from the city to the historical society for retention in the permanent records repository. Any documents that will not be transferred for retention in the permanent records repository may be destroyed. If the city clerk receives no written response within

thirty (30) days after the notice was received by the historical society, then the records proposed for destruction may be destroyed.

(ii) The provisions of this section related to retention of permanent records shall only apply to the record retained in the nonpaper medium.

(f) Even if a historic record is retained in a nonpaper medium as authorized by this section, the original paper record shall also be retained by the city in perpetuity, or it may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(g) Whenever any record is retained in a nonpaper medium, the city clerk shall maintain, throughout the scheduled retention period for such record, suitable equipment for displaying such record at not less than original size and for making copies of the record.

(h) Whenever any record is retained in a nonpaper medium, it shall be made in duplicate and the custodian thereof shall place one (1) copy in a fire-resistant vault or off-site storage facility, and he shall retain the other copy in his office with suitable equipment for displaying such record at not less than original size and for making copies of the record.

(7) Destruction or transfer of records:

(a) Permanent records shall not be destroyed, except for paper originals of permanent records retained in a nonpaper medium as provided in subsection (6)(e) of this section. Permanent records may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

(b) Semipermanent records may be destroyed only by resolution of the city council and upon the advice of the city attorney, except for paper originals of semipermanent records retained in a nonpaper medium as provided in subsection (6)(d) of this section. Such disposition shall be under the direction and supervision of the city clerk. The resolution ordering destruction shall list in detail records to be destroyed.

(c) Temporary records may be destroyed only by resolution of the city council and upon the advice of the city attorney, except for paper originals of temporary records retained in a nonpaper medium as

provided in subsection (6)(d) of this section. Such disposition shall be under the direction and supervision of the city clerk. The resolution ordering destruction shall list in detail records to be destroyed.

(d) Historical records may not be destroyed but may be transferred to the Idaho state historical society's permanent records repository upon resolution of the city council.

### **History.**

I.C., § 50-907, as added by 2005, ch. 41, § 2, p. 163; am. 2016, ch. 226, § 1, p. 621.

## **STATUTORY NOTES**

### **Cross References.**

State historical society, § 67-4113.

### **Prior Laws.**

Former § 50-907, which comprised 1967, ch. 429, § 158, p. 1249; am. 1976, ch. 50, § 1, p. 150, was repealed by S.L. 2005, ch. 41, § 1.

### **Amendments.**

The 2016 amendment, by ch. 226, rewrote subsection (4), which formerly read: "Semipermanent and temporary records may only be destroyed by resolution of the city council, and upon the advice of the city attorney. Such disposition shall be under the direction and supervision of the city clerk. The resolution ordering destruction shall list in detail records to be destroyed. Prior to destruction of semipermanent records, the city clerk shall provide written notice, including a detailed list of the semipermanent records proposed for destruction, to the Idaho state historical society thirty (30) days prior to the destruction of any records"; in subsection (5), deleted "Prior to January 1, 2007" at the beginning and added subsections (6) and (7), picking up much of what had been codified in former subsection (4).

### **Compiler's Notes.**

For further information on standards of the American national standards institute, referred to in paragraph (6)(a), see <https://www.ansi.org>.

**§ 50-908. Designation, powers and responsibilities of municipal records management officers — Duties of city officials concerning records.** — (1) The city clerk shall serve as the municipal records manager in each city, and each department may designate a department records manager who reports to the city clerk. The municipal records manager shall supervise the administration of city records, including:

- (a) Ensuring the orderly and efficient management of municipal records in compliance with state and federal statutes and regulations and city ordinances, resolutions and policies;
- (b) Identification and appropriate administration of records of enduring value for historical or other research;
- (c) Overseeing retention and destruction of municipal records as directed by state and federal statutes and regulations and city ordinances, resolutions and policies; and
- (d) Coordinating transfer of permanent records to the Idaho state historical society's permanent records repository, with the assistance of the state archivist.

(2) All city officials, elected, appointed and staff, shall:

- (a) Protect the records in their custody;
- (b) Cooperate with the municipal records manager on the orderly and efficient management of records including identification and management of inactive records and identification and preservation of records of enduring value; and
- (c) Pass on to their successor records necessary for the continuing conduct of city business.

All city records are property of the city, and no city official, elected, appointed or staff, shall have any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction or removal of city records is prohibited.

**History.**

I.C., § 50-908, as added by 2005, ch. 41, § 3, p. 163.

## STATUTORY NOTES

### **Cross References.**

State historical society, § 67-4113.

### **Prior Laws.**

Former § 50-908, which comprised 1967, ch. 429, § 159, p. 1249; am. 1997, ch. 143, § 1, p. 415, was repealed by S.L. 2005, ch. 41, § 1.

### **Compiler's Notes.**

The reference to the state archivist, at the end of paragraph (1)(d), is to the state archives administrator at the Idaho state historical society. See <https://history.idaho.gov/idaho-state-archives>.

**§ 50-909. Retention of city records using photographic and digital media. [Repealed.]**

Repealed by S.L. 2016, ch. 226, § 2, effective July 1, 2016. For present comparable provisions, see § 50-907.

**History.**

**I.C., § 50-909**, as added by 2005, ch. 41, § 4, p. 163; am. 2009, ch. 11, § 20, p. 14.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-909, which comprised 1967, ch. 429, § 160, p. 1249, was repealed by S.L. 2005, ch. 41, § 1.



**§ 50-910. Photographic or digital retention of city records.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-910**, as added by 1997, ch. 143, § 2, p. 415, was repealed by S.L. 2005, ch. 41, § 1. For present comparable provisions, see § 50-907.



## Chapter 10 FINANCES

Sec.

50-1001. Fiscal year.

50-1002. Annual budget.

50-1003. Annual appropriations bill — Amending appropriation ordinance  
— Special appropriation upon petition or election.

50-1004. Special tax assessment — Warrant redemption fund.

50-1005. Expenses not to precede appropriation — Interim ordinance.  
[Repealed.]

50-1005A. Accumulation of fund balances.

50-1006. Expenditures not to exceed appropriation — Exceptions.

50-1007. Certification and collection of city taxes.

50-1008. Collection of special assessments — Certification to tax collector  
— Widow's exemption.

50-1009. Payment by tax collector to city treasurer. [Repealed.]

50-1010. Audit of city finances — Audit to be filed.

50-1011. Publication of financial statements — Noncompliance.

50-1012. Accounting system. [Repealed.]

50-1013. Deposit and investment of funds.

50-1013A. Investment of deposits of deferred compensation plans.

50-1014. Transfer of funds.

50-1015. Disposition of license fees and fines.

50-1015A. Disposition of parking fees and fines.

50-1016. Deductions from wages.

50-1017. Presentation of claims.

50-1018. Payment of claims.

50-1019. Purposes for which bonds may be issued — Limitation on amount.

50-1020. Waterworks — Light and power plants — Sewerage systems.

50-1021. Previous issues validated.

50-1022. Joint services.

50-1023. Joint services — Agreement on apportionment.

50-1024. Joint services — Bond election in each city.

50-1025. Joint services — Committee for construction or purchase.

50-1026. City bonds — Ordinance — Election.

50-1026A. City bonds — Pledge of revenues.

50-1027. Revenue bonds — Short title.

50-1028. Grant of authority.

50-1029. Definitions.

50-1030. Powers.

50-1031. Supervision of projects.

50-1032. Projects to be self-supporting.

50-1033. Use of projects — Revenue.

50-1034. Preliminary expenses.

50-1035. Ordinance prior to construction — Election.

50-1035A. Issuance of revenue bonds at rates of interest in excess of original specification.

50-1036. Bonds — Form — Conditions — Bond anticipation notes.

50-1037. Bonds — Issuance — Terms — Conditions.

50-1038. Validity of bonds.

50-1039. Lien of bonds.

50-1040. City not liable on bonds.

50-1041. Tax levy to pay bonds prohibited.

50-1042. Projects and bonds exempt from taxation.

50-1043. Short title.

50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement and collect certain city nonproperty taxes.

50-1045. City property tax relief fund.

50-1046. City local-option nonproperty taxes permitted by sixty per cent majority vote.

50-1047. General provisions.

50-1048. Coordination with county local-option nonproperty taxes.

50-1049. Collection and administration of local-option nonproperty taxes by state tax commission — Distribution.

**§ 50-1001. Fiscal year.** — The fiscal year of each city shall commence on the first day of October.

**History.**

1967, ch. 429, § 161, p. 1249; am. 1976, ch. 45, § 1, p. 122.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of tit. 50.

**Compiler's Notes.**

Section 31 of S.L. 1976, ch. 45 read: **“Transitional budget and levy.** The budget adopted by each city in the state of Idaho on or prior to March 31, 1977 shall provide for a fiscal year, January 1 to September 30, 1977. The levy certified to the county commissioners on the second Monday of September in 1977 shall be based only upon either the said budget and an estimate of the expenditures for an additional three month period, October 1 through December 31, 1977 or only upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

“The budget adopted by the county commissioners in each of the counties in the state of Idaho during the week of the second Monday in February 1977 shall provide for a fiscal year from the second Monday in January to September 30, 1977. The levy certified on the second Monday of September, 1977 shall be based only upon either said budget and include an estimate of expenditures for an additional three month period, October 1 through December 31, 1977 or upon a budget adopted for the fiscal year October 1, 1977 through September 30, 1978.

“Prior to October 1, 1977 and every year thereafter, all cities and counties in the state of Idaho shall adopt a budget for the ensuing fiscal year, October 1 through September 30.”

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

## **CASE NOTES**

### **Decisions Under Prior Law Change in Payment Time.**

Change in time of payment of taxes did not deprive city of amount of taxes levied for fiscal year, even though such taxes were not collected during fiscal year for which they were levied. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

**§ 50-1002. Annual budget.** — The city council of each city shall, prior to passing the annual appropriation ordinance, prepare a budget, estimating the probable amount of money necessary for all purposes for which an appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the proposed expenditures by department, fund or service, as nearly as may be practicable, and specifying any fund balances accumulated under section 50-1005A, Idaho Code. To support such proposed expenditure, the council shall prepare an estimate of the total revenue anticipated during the ensuing fiscal year for which a budget is being prepared classifying such receipts by source as nearly as may be possible and practicable, said estimate to include any surplus not subject to the provisions of sections 50-1004 and 50-1005A, Idaho Code, nor shall said estimated revenue include funds accumulated under section 50-236, Idaho Code. The proposed budget for the ensuing fiscal year shall list expenditures and revenues during each of the two (2) previous fiscal years by fund and/or department. Following tentative approval of the revenues and expenditures estimated by the council, the same shall be entered at length in the journal of proceedings. Prior to certifying to the county commissioners, a notice of time and place of public hearing on the budget, which notice shall include the proposed expenditures and revenues by fund and/or department including the two (2) previous fiscal years, and a statement of the estimated revenue from property taxes and the total amount from sources other than property taxes of the city for the ensuing fiscal year, shall be published twice at least seven (7) days apart in the official newspaper. At said hearing any interested person may appear and show cause, if any he has, why such proposed budget should or should not be adopted.

### **History.**

1967, ch. 429, § 162, p. 1249; am. 1972, ch. 22, § 1, p. 27; am. 1976, ch. 45, § 2, p. 122; am. 1981, ch. 318, § 3, p. 662; am. 1994, ch. 89, § 1, p. 205.

## **CASE NOTES**

### **Decisions Under Prior Law**



Effect of limitation on contracts.

Payment of special improvement bonds.

Publication of annual appropriation.

Purpose and necessity of compliance.

### **Effect of Limitation on Contracts.**

Contract by a city which incurred a total liability to an amount exceeding city's revenue for year in which contract was made was void if it failed to comply with all provisions of Idaho **Const., Art. VIII, § 3**, although actual debt incurred thereby would not mature in excess of city's revenue until after year in which contract was made. **Boise Dev. Co. v. City of Boise, 26 Idaho 347, 143 P. 531 (1914).**

Debt created by contract made by a city to settle uncertain and unliquidated damage claims against city was held to be a new debt or liability within the provisions of Idaho **Const., Art. VIII, § 3**, and, therefore, void if it exceeded amount of revenue provided for city for year in which contract was made. **Boise Dev. Co. v. City of Boise, 26 Idaho 347, 143 P. 531 (1914).**

### **Payment of Special Improvement Bonds.**

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city's property, where the city never fixed any amount to be paid from general funds for improvements and the item never was included within the budget or appropriation bill. **Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527 (1933).**

### **Publication of Annual Appropriation.**

Statutory provisions for publishing notice of annual estimate of municipal appropriations were mandatory. **Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527 (1933).**

### **Purpose and Necessity of Compliance.**

Preparation and publication of estimate of probable amount of money necessary to be raised for all purposes was condition precedent to levy of

taxes under former section governing general tax levies. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

Purpose of requiring publication of estimate was to enable inhabitants and taxpayers to become informed as to purposes for which the amounts were proposed to be levied against their property. *Graves v. Berry*, 35 Idaho 498, 207 P. 718 (1922).

**§ 50-1003. Annual appropriations bill — Amending appropriation ordinance — Special appropriation upon petition or election.** — The city council of each city shall, prior to the commencement of each fiscal year, pass an ordinance to be termed the annual appropriation ordinance, which in no event shall be greater than the amount of the proposed budget, in which the corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during that year in addition to all other anticipated revenues. Provided, the amount appropriated from property tax revenues shall not exceed the amount of property tax revenue advertised pursuant to section 50-1002, Idaho Code.

Such ordinance shall specify the object and purposes for which such appropriations are made and the amount appropriated for each object or purpose. Said ordinance shall be filed with the office of the secretary of state.

The city council of any city may, by the same procedure as used in adopting the original appropriation ordinance at any time during the current fiscal year, amend the appropriation ordinance to a greater amount than that adopted, if after the adoption of the appropriation ordinance, additional revenue will accrue to the city during the current fiscal year as a result of increase in state or federal grants or allocations, or as a result of an increase in an enterprise fund or funds to finance the operation and maintenance of governmental facilities and services which are entirely or predominantly self-supporting by user charges, or as a result of an increase in revenues from any source other than ad valorem tax revenues. A city whose property tax certification is made for the current fiscal year may amend its budget and annual appropriation ordinance, pursuant to the notice and hearing requirements of [section 50-1002, Idaho Code](#), prior to certification to the county commissioners.

No further appropriation, except as herein provided, shall be made at any other time within such fiscal year unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of

such city, either by petition signed by them equal in number to a majority of the number who voted at the last general city election, or approved at a special election duly called therefor, and all appropriations shall end with the fiscal year for which they are made.

### **History.**

1967, ch. 429, § 163, p. 1249; am. 1974, ch. 166, § 1, p. 1422; am. 1976, ch. 45, § 3, p. 122; am. 1981, ch. 318, § 4, p. 662; am. 1982, ch. 276, § 1, p. 708; am. 1987, ch. 172, § 1, p. 338; am. 1989, ch. 25, § 1, p. 29.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Effective Dates.**

Section 2 of S.L. 1982, ch. 276 declared an emergency. Approved March 31, 1982.

## **CASE NOTES**

### **Decisions Under Prior Law**

[Appropriation for indebtedness.](#)

[Flood damage as authorizing borrowing of money.](#)

[Necessity of appropriation bill.](#)

[Payment of special improvement bonds.](#)

[Petition.](#)

### **[Appropriation for Indebtedness.](#)**

Municipal indebtedness incurred in one fiscal year could not be paid from the revenues of a later fiscal year unless there was an appropriation and collection therefor in such later year. [Theiss v. Hunter, 4 Idaho 788, 45 P. 2 \(1896\).](#)

Failure to include in appropriation ordinance specific appropriation for payment of outstanding warrant indebtedness did not oust city council of

power thereafter to make such appropriation, or in case of failure to do so prior to time of certifying tax levy for city, it did not deprive them of jurisdiction to certify a sufficient levy within maximum prescribed by former similar section to meet such indebtedness. [Standrod v. Case, 24 Idaho 365, 133 P. 651 \(1913\).](#)

Former similar section did not contemplate an actual levy by city authorities at time of passing appropriation bill for purpose of paying outstanding indebtedness, but it rather required council to make an appropriation of a lump sum for such purpose and limited amount that could be thus appropriated. [Standrod v. Case, 24 Idaho 365, 133 P. 651 \(1913\).](#)

### **Flood Damage as Authorizing Borrowing of Money.**

“Casualty” or “accident,” consisting of continuous floods from December 20, 1933, until after the first part of July, 1934, occurred after city adopted annual appropriation bill on June 11, 1934, so as to authorize it to borrow money to repair and restore damaged sewers without taxpayers’ sanction, though bill failed to provide for such expenditures. [Ramstedt v. City of Wallace, 55 Idaho 1, 36 P.2d 772 \(1934\).](#)

### **Necessity of Appropriation Bill.**

Passage of appropriation bill was condition precedent to authority of village trustees to levy taxes under former section governing general tax levies. [Graves v. Berry, 35 Idaho 498, 207 P. 718 \(1922\).](#)

Bond issue authorized by election was exempt from provision of former similar section that annual appropriation bill must have contained appropriation for necessary expenses. [Village of Oakley v. Wilson, 50 Idaho 334, 296 P. 185 \(1931\).](#)

### **Payment of Special Improvement Bonds.**

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city’s property, where the city never fixed any amount to be paid from general funds for improvements, and the item never was included within the budget or appropriation bill. [Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527 \(1933\).](#)

## Petition.

Finding by municipal council that petition favoring appropriation was signed by majority of legal voters was presumptively correct. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

In absence of election called for the purpose, there was no way other than by petition signed by majority of legal voters to determine whether majority of qualified voters favor appropriation. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

**§ 50-1004. Special tax assessment — Warrant redemption fund. —**

At the time of passing the annual appropriation ordinance, said city councils, unless provision shall have been made as provided by law for the funding, refunding, purchase, redemption or exchange of the outstanding city warrant indebtedness, must, whenever any city shall have warrants outstanding and unpaid, for the payment of which there are no funds in the city treasury, in addition to other taxes provided by law, if such warrants amount to a sum equal to five per cent (5%) or more of the value of the taxable property of such city, levy and include a special tax assessment of not to exceed two tenths per cent (.2%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to four per cent (4%) and less than five per cent (5%) of such taxable property, they must levy and include a special tax or assessment of not to exceed sixteen hundredths per cent (.16%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to three per cent (3%) and less than four per cent (4%) of such taxable property, they must levy and include a special tax or assessment of not to exceed twelve hundredths per cent (.12%) of market value for assessment purposes in such annual appropriation bill; if such warrants amount to a sum equal to two per cent (2%) and less than three per cent (3%) of such taxable property, they must levy and include a special tax or assessment of not to exceed eight hundredths per cent (.08%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to one per cent (1%) and less than two per cent (2%) of such taxable property they must levy and include a special tax or assessment of not to exceed four hundredths per cent (.04%) of market value for assessment purposes in such annual appropriation bill; and if such warrants amount to less than one per cent (1%) of such taxable property, then they must levy and include such special tax or assessment on the dollar in such annual appropriation bill as shall be sufficient to pay such warrants.

All moneys arising from such special tax or assessment shall be placed in a special fund to be known as the “Warrant Redemption Fund” and the redemption of such warrants shall be paid exclusively from this fund.

All moneys in the city treasury at the end of each fiscal year not needed for that year's expenses and applicable thereto, and not subject to the provisions of [section 50-1005A, Idaho Code](#), shall be transferred to said "Warrant Redemption Fund," if such there be.

**History.**

1967, ch. 429, § 164, p. 1249; am. 1976, ch. 45, § 4, p. 122; am. 1996, ch. 208, § 21, p. 658.

**STATUTORY NOTES**

**Effective Dates.**

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.



**§ 50-1005. Expenses not to precede appropriation — Interim ordinance. [Repealed.]**

## **STATUTORY NOTES**

### **Compiler's Notes.**

This section, which comprised S.L. 1967, ch. 429, § 165; am. 1974, ch. 35, § 1, was repealed by S.L. 1976, ch. 45, § 5 effective July 1, 1977.

**§ 50-1005A. Accumulation of fund balances.** — Cities may accumulate fund balances at the end of a fiscal year and carry over such fund balances into the ensuing fiscal year sufficient to achieve or maintain city operations on a cash basis. A fund balance is the excess of the assets of a fund over its liabilities and reserves.

**History.**

I.C., § 50-1005A, as added by 1976, ch. 45, § 6, p. 122.

**§ 50-1006. Expenditures not to exceed appropriation — Exceptions.**

— The mayor and council shall have no power to appropriate, issue or draw on the treasurer for money unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 50-1001 through 50-1042, Idaho Code, and appropriations for the class or object out of which such claim is payable has been made as provided in sections 50-1001 through 50-1042, Idaho Code. Neither the city council nor any department or officer of the corporation shall add to the corporation expenditures in any year anything over and above the amount provided in the annual appropriation bill for the year, except as herein otherwise specially provided; and no expenditures for any improvement to be paid shall exceed in any year the amount allocated for such improvement in the annual appropriation bill, provided, however, that nothing herein contained shall prevent one-half (1/2) plus one (1) of the members of the full council from declaring an emergency, the necessity for which was caused by casualty, accident, or act of nature after such annual appropriation is made. In the event of a declared emergency caused by casualty, accident, or act of nature, the city council may order the mayor and finance committee to borrow a sufficient sum to provide for the expense incurred in abating the emergency or the making of any repairs or restoration of improvements, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy and embraced therein.

Should any judgment be obtained against the corporation, the mayor and finance committee, under the sanction of the city council, may borrow for a space of time not exceeding the close of the next fiscal year, a sufficient amount to pay the same, which sum and interest shall in like manner be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

**History.**

1967, ch. 429, § 166, p. 1249; am. 1980, ch. 136, § 6, p. 297; am. 1987, ch. 171, § 1, p. 337; am. 1996, ch. 322, § 50, p. 1029.

## STATUTORY NOTES

### Cross References.

Constitutional limitation on indebtedness, Idaho [Const., Art. VIII, § 3](#).

## CASE NOTES

### Decisions Under Prior Law

Casualty construed.

Emergency expenses.

Flood damage.

Judgment against city.

Pavement expense.

Payment of special improvement bonds.

Street paving.

Time of receiving revenue immaterial.

### Casualty Construed.

Progressive decay of underside of planking of municipal wharf was not casualty or accident within meaning of former similar section. [Eaton v. Glindeman, 33 Idaho 389, 195 P. 90 \(1921\)](#).

Word “casualty”, strictly and liberally, was limited to injuries which arose solely from accident, without any element of conscious human design or intentional human agency; something not to be foreseen or guarded against; something that happens not in usual course of events; word “casualty” being synonymous with accident. [Eaton v. Glindeman, 33 Idaho 389, 195 P. 90 \(1921\)](#).

### Emergency Expenses.

City council was authorized by two-thirds vote to incur indebtedness to replace waterworks and fire extinguishing apparatus destroyed by fire. [Hickey v. City of Nampa, 22 Idaho 41, 124 P. 280 \(1912\)](#).

Municipal resolution reciting necessity of incurring expense and that it was due to casualty or accident conferred no authority when facts did not bring case within purview of former similar section. [Eaton v. Glindeman](#), 33 Idaho 389, 195 P. 90 (1921).

Appropriation bill was intended to limit expenditures for fiscal year, except in certain cases of casualty or accident. [Graves v. Berry](#), 35 Idaho 498, 207 P. 718 (1922).

### **Flood Damage.**

“Casualty” or “accident,” consisting of continuous floods from December 20, 1933, until after the first part of July, 1934, occurred after city adopted annual appropriation bill on June 11, 1934, so as to have authorized it to borrow money to repair and restore damaged sewers without taxpayers’ sanction, though bill failed to provide for such expenditures. [Ramstedt v. City of Wallace](#), 55 Idaho 1, 36 P.2d 772 (1934).

### **Judgment Against City.**

Judgment against a city for amount due holders of improvement bonds could not properly authorize the issuance of an execution thereon, since such judgment was not subject to be enforced in that manner. [Wheeler v. City of Blackfoot](#), 55 Idaho 599, 45 P.2d 298 (1935).

### **Pavement Expense.**

Franchise, roadbed, tracks and like property of street railroads in pavement improvement district were taxable as “abutting, contiguous, tributary or included lands” in proportion to benefits accruing from the improvement. [Reynard v. City of Caldwell](#), 55 Idaho 342, 42 P.2d 292 (1935).

### **Payment of Special Improvement Bonds.**

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city’s property, where the city never fixed any amount to be paid from general funds for improvements and the item never was included within the budget or appropriation bill. [Reynard v. City of Caldwell](#), 53 Idaho 62, 21 P.2d 527 (1933).

### **Street Paving.**

Expense of paving streets was not an “ordinary and necessary expense,” as regards statutory provision limiting expenditures to amount of appropriation. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

**Time of Receiving Revenue Immaterial.**

Fact that time for collection of taxes could be made after commencement of fiscal year different from that in which they were levied did not deprive city of taxes levied for any fiscal year, even though they were collected in a succeeding fiscal year. *Wycoff v. Strong*, 26 Idaho 502, 144 P. 341 (1914).

**§ 50-1007. Certification and collection of city taxes.** — The council of each city not later than [the Thursday prior to] the second Monday in September, as provided in section 63-803(3), Idaho Code, shall certify to the county commissioners of the county, the total amount required from a property tax upon property within the city to raise the amount of money fixed by their budget as previously approved which shall include all special taxes assessed as provided by law. The amount which may be so certified, assessed and collected shall not exceed the maximum levy provided by section 50-235, Idaho Code, to defray its general expenses for either the current or the ensuing fiscal year, together with any special taxes, authorized under the provisions of this act, and such tax as may be authorized by law to be levied for the payment of outstanding bonds and debts. In all sales for delinquent city taxes, if there be other delinquent taxes from the same person, or lien upon the same property, the sale shall be for all the delinquent taxes; and such sales and all sales made under and by virtue of this section or the provisions of law herein referred to shall be of the same validity, and in all respects be deemed and treated as though sales had been made for delinquent state and county taxes exclusively.

**History.**

1967, ch. 429, § 167, p. 1249; am. 1972, ch. 14, § 1, p. 18; am. 1976, ch. 45, § 7, p. 22; am. 1977, ch. 184, § 1, p. 514; am. 1996, ch. 322, § 51, p. 1029.

**STATUTORY NOTES**

**Cross References.**

Airports, levy, § 21-404.

Authorized to levy taxes, § 50-235.

Capital improvement fund levy, § 50-236.

Collection and payment of property taxes, § 63-901 et seq.

Limitation on property taxes, § 63-1313.

Policemen's retirement fund, special levy, § 50-1512.

Recreation and culture, special levy, § 50-303.

Special assessment levies, § 50-1004.

### **Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to reflect the language of the 2002 amendment of § 63-803(3).

The term "this act" near the end of the second sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

Section 2 of S.L. 1977, ch. 184 read, "Cities and counties may issue tax anticipation notes or bonds during the transitional fiscal year 1977, January through September 30, based upon the amount to be certified to the county commissioners prior to the second Monday of September, 1977, and subject to the percentage limitations set forth in [section 63-3102, Idaho Code](#). Each city or county may make only one (1) certification, either for the current or the ensuing fiscal year."

### **Effective Dates.**

Section 32 of S. L. 1976, ch. 45 read, "In order to provide an orderly sequence for implementation of the provisions of this act: "(a) Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 27 and 31 shall be in full force and effect on and after January 1, 1977; "(b) Sections 5, 6, 12, 13, 14, 20, 21, 22, 26 and 30 shall be in full force and effect on and after July 1, 1977; and "(c) Sections 16, 17, 18, 19, 23, 24, 25, 28 and 29 shall be in full force and effect on and after October 1, 1977."

Section 3 of S.L. 1977, ch. 184 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977.

## **CASE NOTES**

### **Decisions Under Prior Law**

[Changing levy.](#)

[City liable for embezzlement.](#)



Clerk to make collections.

Compensation for collection.

Construction.

Illegality of collection.

Special taxes.

Warrants issued in former years.

### **Changing Levy.**

City council, any time before certifying tax levy for city, could change same. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

### **City Liable for Embezzlement.**

A city which permitted its clerk to collect local improvement assessments in pursuance of statutory authority therefor could not subsequently have questioned the legality of collection by city clerk rather than by county tax collector as defense to action by bondholder for value of special assessment bonds which remained unpaid as result of the city clerk's embezzlement of funds which had been collected for payment of such bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

### **Clerk to Make Collections.**

A clerk of a city had statutory authority to receive and receipt for local improvement assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

### **Compensation for Collection.**

Neither county nor tax collector was authorized to retain any part of taxes collected as compensation for collecting them. *City of Moscow v. Latah County*, 5 Idaho 36, 46 P. 874 (1896).

### **Construction.**

Levy authorized under former similar section could include a levy for the redemption of outstanding warrants for which an appropriation had been made under former section governing the annual appropriation bill. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

The power to levy the tax was conferred by former section governing general tax levies, while former section governing certification provided for its certification and collection. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

### **Illegality of Collection.**

A city which permitted its clerk to collect local improvement assessments, which were properly paid in part to bondholders by the city treasurer, could not have alleged illegality of collection by clerk, rather than by county tax collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk's embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1938).

### **Special Taxes.**

Former similar section was not repealed by statute authorizing the construction of sewers; and city authorities could certify sewerage taxes to county tax collector to be collected as other taxes. *Denning v. City of Moscow*, 11 Idaho 415, 83 P. 339 (1905).

### **Warrants Issued in Former Years.**

City treasurer could not be compelled to pay warrants issued in former years unless the revenues of the present year were levied to include such indebtedness. *Theiss v. Hunter*, 4 Idaho 788, 45 P. 2 (1896).

**§ 50-1008. Collection of special assessments — Certification to tax collector — Widow's exemption.** — All special assessments levied in any city to which the provisions of this act are made applicable shall be due and payable to the city treasurer and, if not paid within thirty (30) days after mailing of notification of assessment, shall be declared delinquent and be certified to the tax collector of the county by the city clerk, not later than the first day of August and shall be by said tax collector placed upon the tax roll and collected in the same manner and subject to the same penalties as other city taxes; provided, however, that special assessments certified to the tax collector which are placed on property qualifying for a widow's exemption may be returned to the taxing district from which they originated if the special assessments are not paid within three (3) years. All money received on special assessments shall be held by the city treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever unless to reimburse such city for money expended for such improvement.

**History.**

1967, ch. 429, § 168, p. 1249; am. 1970, ch. 227, § 1, p. 637; am. 1973, ch. 289, § 1, p. 612.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**Effective Dates.**

Section 2 of S.L. 1973, ch. 289 provided the act should take effect on and after July 1, 1973.

**§ 50-1009. Payment by tax collector to city treasurer. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1969, ch. 429, § 169, was repealed by S.L. 1972, ch. 17, § 1.

**§ 50-1010. Audit of city finances — Audit to be filed.** — It shall be the duty of the council in every city to cause to be made a full and complete audit of the financial statements of such city as required in section 67-450B, Idaho Code.

The council shall be required to include all necessary expenses for carrying out the provisions of this section in its annual budget.

**History.**

1967, ch. 429, § 170, p. 1249; am. 1977, ch. 71, § 5, p. 134; am. 1982, ch. 42, § 1, p. 68; am. 1987, ch. 13, § 1, p. 18; am. 1993, ch. 327, § 23, p. 1186; am. 1993, ch. 387, § 15, p. 1417.

**STATUTORY NOTES**

**Amendments.**

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 327, in the former last paragraph of this section substituted “council” for “auditor”. However, ch. 387, § 15 deleted the former last paragraph of this section which read: “The council is hereby required to file one (1) copy of such completed audit report with the legislative auditor within ten (10) days after its delivery by the contracting auditor.” Therefore, the former last paragraph has been deleted.

The 1993 amendment, by ch. 387, in the first paragraph deleted “all” following “a full and complete audit of”; substituted “statements” for “transactions” preceding “of such city”; at the end of the first paragraph substituted “as required in [section 67-450B, Idaho Code](#)” for “every year; however, lacking more stringent requirements by contract or government law, rule, or regulation, any city whose annual budget for all purposes does not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial transactions audited on a biennial basis and may continue biennial auditing cycles in subsequent years provided that the city’s annual budget does not exceed two hundred fifty thousand dollars (\$250,000)

during any biennial period.”; deleted the former last two sentences of the first paragraph; and deleted the former last paragraph of this section.

**Compiler’s Notes.**

Section 41 of S.L. 1993, ch. 327 read: “All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

**§ 50-1011. Publication of financial statements — Noncompliance. —**

It shall be the duty of the city treasurer to cause to be published quarterly during each fiscal year for at least one (1) insertion in the official newspaper of the city, a full statement of each separate account, fund or appropriation for the year to date, and balances of the debits and credits belonging thereto, indicating salaries, capital outlay and a percentage comparison to the original appropriation. All published financial statements shall include the following: “Citizens are invited to inspect the detailed supporting records of the above financial statements.” Such statement shall be published within thirty (30) days from the end of each quarter, except for [the statement for] the final quarter of the fiscal year which shall be published no later than thirty (30) days from the date of completion of the annual audit. Notwithstanding the above, no one shall be precluded from making this filing prior to the completion of an audit. Failure upon the part of the treasurer of any city to comply with the requirements of this section shall be deemed a misdemeanor.

**History.**

1967, ch. 429, § 171, p. 1249; am. 1979, ch. 90, § 2, p. 217; am. 1989, ch. 28, § 1, p. 33; am. 1990, ch. 88, § 1, p. 183.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed insertion in the third sentence was added by the compiler to clarify the sentence.

**Effective Dates.**

Section 3 of S.L. 1979, ch. 90 declared an emergency. Approved March 20, 1979.

Section 2 of S.L. 1989, ch. 28 declared an emergency. Approved March 20, 1989.

**§ 50-1012. Accounting system. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised **I.C., § 50-1012**, as added by 1974, ch. 71, § 2, p. 1152, am. 1994, ch. 180, § 91, p. 420, was repealed by S.L. 2003, ch. 32, § 1.



**§ 50-1013. Deposit and investment of funds.** — The treasurer shall be required to keep all money in his hands belonging to the corporation in such place or places of deposit as shall be provided by ordinance; provided, however, that the treasurer may be directed and empowered by resolution, to invest any money in his hands in any of the following:

- (a) Revenue bonds issued by the revenue bond act.
- (b) City coupon bonds provided for under [section 50-1019, Idaho Code](#).
- (c) Local improvement district bonds provided for under chapter 17, title 50, Idaho Code.
- (d) Time deposit accounts with public depositories.
- (e) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (f) General obligation bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.
- (g) General obligation bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.
- (h) Notes, bonds, debentures, or other similar obligations issued by the farm credit system or institutions forming a part thereof under the farm credit act of 1971 ([12 U.S.C. sections 2001-2259](#)) and all acts of congress amendatory thereof or supplementary thereto; in bonds or debentures of the federal home loan bank board established under the federal home loan bank act ([12 U.S.C. sections 1421-1449](#)); in bonds, debentures and other obligations of the federal national mortgage association established under the national housing act ([12 U.S.C. sections 1701-1750g](#)) as amended, and in the bonds of any federal home loan bank established under said act and in other obligations of agencies and instrumentalities of the government of the state of Idaho or of the United States.
- (i) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building

authority, the Idaho housing authority [Idaho housing and finance association] and the Idaho water resource board, but such investment shall not extend beyond seven (7) days.

(j) Repurchase agreements and reverse repurchase agreements covered by any legal investment for the state of Idaho or as otherwise allowed by this section, provided that reverse repurchase agreements shall only be used for the purpose of liquidity and not for leverage or speculation.

(k) Tax anticipation bonds or notes, income and revenue anticipation bonds or notes and registered warrants of the state of Idaho or of taxing districts of the state of Idaho.

(l) Savings accounts including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(m) Time deposit accounts and other savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the federal savings and loan corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(n) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the national credit union share insurance fund and/or any other authorized share guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(o) Prime banker's acceptances.

(p) Prime commercial paper.

(q) Money market funds, mutual funds, or any other similar funds whose portfolios consist of any allowed investment as specified in this section.

(r) Bonds, debentures or notes of any corporation organized, controlled and operating within the United States which have, at the time of their purchase, an A rating or higher by a commonly known rating service.

## **History.**

1967, ch. 429, § 173, p. 1249; am. 1970, ch. 76, § 1, p. 192; am. 1972, ch. 170, § 1, p. 420; am. 1976, ch. 74, § 1, p. 244; am. 1981, ch. 19, § 1, p. 34; am. 1983, ch. 38, § 1, p. 89; am. 1986, ch. 74, § 3, p. 220; 1986, ch. 88, § 1, p. 257; am. 1987, ch. 162, § 1, p. 318; am. 2001, ch. 42, § 1, p. 78.

## **STATUTORY NOTES**

### **Cross References.**

Housing authorities and cooperation law, § 50-1901 et seq.

Idaho state building authority act, § 67-6401 et seq.

Idaho water resources board, § 42-1732 et seq.

Revenue bond act, § 50-1027 et seq.

### **Compiler's Notes.**

The bracketed insertion in subsection (i) was added by the compiler to correct the name of the referenced agency. See § 67-6201 et seq.

The reference to the federal savings and loan corporation in subsection (m) should be to the federal savings and loan insurance corporation. However, that agency was abolished in 1989 and its duties were transferred to the federal deposit insurance corporation. See <https://www.fdic.gov/>.

For more information on the national credit union share insurance fund, referred to in subsection (n), see <https://www.ncua.gov/services/Pages/share-insurance.aspx>.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 1970, ch. 76 declared an emergency. Approved March 2, 1970.

Section 2, S.L. 1972, ch. 170 declared an emergency. Approved March 17, 1972.

## **CASE NOTES**

## Decisions Under Prior Law

Application.

Deposit and investment.

### **Application.**

Former section governing deposit of municipal funds did not apply to the deposit of irrigation district funds. *In re Bank of Nampa, Ltd.*, 29 Idaho 166, 157 P. 1117 (1916).

### **Deposit and Investment.**

Deposit was temporary disposition of money for safekeeping and its temporary nature made it distinguishable from an investment which carries with it greater degree of permanency. *City of Pocatello v. Fargo*, 41 Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

Objection that ordinance designating bank as depositary was not legally passed and void would not be entertained, especially where bank had received deposit and acted in depositary capacity. *City of Pocatello v. Fargo*, 41 Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

Placing of public funds with bank under time certificate of deposit was, in effect, loan to bank on its promissory note. *City of Pocatello v. Fargo*, 41 Idaho 432, 41 Idaho 454, 242 P. 297 (1924).

**§ 50-1013A. Investment of deposits of deferred compensation plans.**

— A municipal corporation, in administering a deferred compensation plan, shall be governed by the uniform prudent investor act, chapter 5, title 68, Idaho Code.

**History.**

**I.C., § 50-1013A**, as added by 1989, ch. 249, § 1, p. 599; am. 1997, ch. 14, § 4, p. 14.

**§ 50-1014. Transfer of funds.** — The city council of the cities may transfer an unexpended balance in one fund to the credit of another fund.

**History.**

1967, ch. 429, § 174, p. 1249.

**§ 50-1015. Disposition of license fees and fines.** — All license fees of every character and all fines and penalties recovered under the provisions of any city ordinance shall be paid into the city treasury for the use and benefit of the general fund, except that the council may transfer and distribute the moneys or revenue, in whole or in part, received and recovered from fines, penalties, forfeitures and costs for enforcing and prosecuting violations of ordinances regulating traffic (pedestrian, motor vehicle or bicycle), including but not limited to parking, moving and nonmoving violations of such traffic regulations to the fund or funds established by ordinance dedicated for the purpose of paying the indebtedness (principal and interest) incurred for the acquisition and construction of off-street parking facilities, including land, buildings, structures, equipment and appurtenances necessary for the parking of motor vehicles. The council may also by ordinance transfer and distribute any portion of said fines, penalties, forfeitures and costs, after deducting that amount required to pay an indebtedness (principal and interest) incurred for acquiring and constructing said off-street parking facilities, for the purpose of maintaining and operating said off-street parking facilities.

**History.**

1967, ch. 429, § 175, p. 1249; am. 1976, ch. 164, § 1, p. 594.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 50-1015A. Disposition of parking fees and fines.** — All moneys collected for the regulation of parking on city streets, whether collected through city parking meters or by the city clerk, shall not be subject to disposition in the same manner as moneys collected for violations of city ordinances, but shall be placed in the general fund of the city.

**History.**

1969, ch. 120, § 1, p. 380.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1969, ch. 120 provided that the act should be effective at 12:01 a.m. on January 11, 1971.



**§ 50-1016. Deductions from wages.** — Any city may deduct, upon written approval of the individual employee, sums certain from said employee's salary or wages for the purpose of paying said sums for premiums on group life, health, accident, disability, hospital and surgical insurance, or any other purposes approved by the city council. Any city may pay all or any part of such deductions as approved by the council.

Any city may adopt a city retirement and pension plan for the benefit of its employees and for that purpose may deduct, upon written approval of the individual employee, sums certain from said employee's wages as a contribution to said plan and any city may pay all or any part of such premiums as approved by the council and may make such other contributions as may be required to make such plan actuarially sound. Such plan may be administered by the employer or by a third party organization selected through a competitive selection process. Further, the employer may cooperate with other city or county employers for joint administration of the plan.

## STATUTORY NOTES

### Cross References.

Policemen's retirement fund, § 50-1501 et seq.

**§ 50-1017. Presentation of claims.** — All claims against the city shall be approved by the city council prior to the payment of such claims and the city council shall establish and maintain an adequate and reasonable system of internal accounting controls. No costs shall be recovered against such city in any action brought against it for any unliquidated claim which has not been presented to the city council for payment, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed with interest due.

**History.**

1967, ch. 429, § 177, p. 1249; am. 1972, ch. 107, § 1, p. 221; am. 1977, ch. 240, § 1, p. 717; am. 2003, ch. 69, § 1, p. 235.

**STATUTORY NOTES**

**Cross References.**

Damage claims, manner of presentation and payment, § 50-219.

**Effective Dates.**

Section 3 of S.L. 2003, ch. 69 declared an emergency. Approved March 13, 2003.

**CASE NOTES**

Decisions Under Prior Law [Suit against councilmen.](#)

[Torts.](#)

**[Suit Against Councilmen.](#)**

Plaintiff who sustained personal injuries as the result of a dead end street accident in a city was not barred from suing councilmen based on their alleged negligence to maintain warning signs merely because the plaintiff failed to file a claim against the city. [Lemmon v. Clayton, 128 F. Supp. 771 \(D. Idaho 1955\).](#)

[Torts.](#)

Claims for torts did not come within former similar section. [Miller v. Mullan](#), 17 Idaho 28, 104 P. 660 (1909).

## RESEARCH REFERENCES

**ALR.** — Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. [59 A.L.R.3d 93](#).

**§ 50-1018. Payment of claims.** — Upon approval of claims by the council, payment may be ordered by warrant or by electronic means, signed by or authorized by the mayor and clerk or by check or by electronic means signed by or authorized by the mayor and treasurer. The order for their payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill. In the absence of sufficient funds, the council may, by resolution, order payment of claims by money borrowed by either:

(1) Registered warrants as provided in [section 31-2125, Idaho Code](#), or  
(2) By issuing its tax [revenue] anticipation notes as provided in [section 63-3102, Idaho Code](#), or (3) Short term borrowing not involved with the tax effort in anticipation of approved federal or state grants.

**History.**

1967, ch. 429, § 178, p. 1249; am. 1976, ch. 48, § 1, p. 147; am. 2003, ch. 69, § 2, p. 235.

## STATUTORY NOTES

**Cross References.**

Payment of invalid or stale claims prohibited, § 50-218.

**Compiler's Notes.**

The bracketed insertion in paragraph (2) was added by the compiler to reflect the language of the 1988 amendment of § 63-3102.

**Effective Dates.**

Section 3 of S.L. 2003, ch. 69 declared an emergency. Approved March 13, 2003.

**§ 50-1019. Purposes for which bonds may be issued — Limitation on amount.** — Every city incorporated under the laws of the territory of Idaho or of the state of Idaho shall have power and authority to issue city coupon bonds not to exceed in aggregate at any time, ten per cent (10%) of the assessed full cash valuation [two per cent (2%) of the market value for assessment purposes] of the real and personal property in said city, according to the assessment of the preceding year, for any or all of the purposes specified [in subsections 1 through 10 of this section,] as follows:

1. To provide for constructing, laying out, grading, curbing, draining, sidewalking or otherwise improving streets, alleys, intersections, crossings and crosswalks; and to construct, or aid in the construction of bridges across streams within or contiguous to, or within one (1) mile of the exterior limits of, such city.

2. To provide for the funding, refunding, purchase and redemption of the outstanding indebtedness, bonds may be issued under this section for such purposes, without submission of the question of issuance of such bonds to the electors of the city, when the same can be done to the profit and benefit of such city without incurring any additional liability.

3. To provide for the establishment of hospitals and cemeteries, either within or without the corporate limits of such city.

4. To provide for the purchase, improvement and equipment of lands and buildings thereon, for public parks, monuments, recreation facilities and zoos, either within or without the corporate limits of such city.

5. To provide for the purchase, erection, construction and furnishing of city public libraries.

6. To provide for the establishment of a fire department by the purchase of building sites, buildings, and suitable equipment and apparatus necessary to provide fire protection.

7. To provide for the purchase, acquisition, improvement and equipment of aviation facilities either wholly or partly within or without the corporate limits of such city, or wholly or partly within or without the state of Idaho.

8. To provide for flood control by acquisition and purchase of right-of-way and to establish, alter, enlarge, improve, reconstruct and change the channels of watercourses or any stream, river or body of water within or without the corporate limits of the city.

9. To provide for the acquisition, construction, remodeling, improvement or otherwise, of buildings for public use, together with all necessary appurtenant facilities and equipment, including all necessary land for building sites, either within or without the corporate limits of such city.

10. To provide for the purchase, acquisition, erection and construction of off-street parking sites, structures, buildings, facilities, equipment and appurtenances.

11. To provide for the purchase, acquisition, improvement and equipment of transit systems.

All bonds of any municipality which were issued, sold and delivered to the purchasers thereof prior to April 12, 1967, for the purpose of providing for the building, laying, construction, equipment, extension, enlargement, alteration, improvement or maintenance of storm sewers or sanitary sewerage systems, shall be excluded when determining the aggregate amount of bonds of any city issued hereunder which are outstanding for the purpose of computing the debt limitation provided for in the first paragraph of this section.

### **History.**

1967, ch. 429, § 179, p. 1249; am. 1968 (2nd E.S.), ch. 7, § 1, p. 15; am. 1970, ch. 130, § 1, p. 305; am. 1976, ch. 163, § 1, p. 592; am. 1980, ch. 54, § 1, p. 111; am. 1980, ch. 350, § 22, p. 887.

## **STATUTORY NOTES**

### **Cross References.**

Power to issue bonds, § 50-237.

### **Amendments.**

This section was amended by two 1980 acts, Chapters 54 and 350, which made different changes in the first paragraph of the section. Accordingly,

that paragraph reflects the conflicting amendments with the varying language of S.L. 1980, Chapter 350 in brackets. In addition, S.L. 1980, Chapter 54 added subsection (11).

### **Effective Dates.**

Section 2 of S.L. 1968 (2nd E.S.), ch. 7 declared an emergency. Approved February 12, 1968.

## **CASE NOTES**

Attempted evasion.

Charter provisions.

City hall.

Distinguished from local improvements.

Ditches.

Equitable relief on void bonds.

Funding and refunding bonds.

Nature of power to issue bonds.

Parks.

Statutory provisions incorporated in bond.

### **Attempted Evasion.**

City could not evade provisions of former similar section limiting bonded indebtedness to certain percentage of real estate valuation for preceding year, by voting bonds for partial payment on a contract, and making no legal provision for balance due upon said contract. *Woodward v. City of Grangeville*, 13 Idaho 652, 92 P. 840 (1907).

A city could not pledge its revenues from any source whatever without creating an indebtedness subject to the restriction of Idaho Const., Art. 8, § 3. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

Former sections dealing with municipal bonds did not provide for the issuance of municipal bonds for the construction and operation of a system for the distribution of gas and the creation of the cooperative in question, its

contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance, were all parts of a plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

### **Charter Provisions.**

Act of legislature amending charter of city, providing that fifteen per cent of entire property of city, both personal and real, could be considered as basis for issuing bonds for municipal improvements, wherein it was provided that bonds should not be issued in excess of fifteen per cent of the taxable property as shown by the assessment of the preceding year, was a local or special law, but did not conflict with state constitution. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

### **City Hall.**

Issuance of bonds by City of Gooding for city hall was held proper. *Thomas v. City of Gooding*, 27 Idaho 624, 149 P. 1064 (1915).

### **Distinguished From Local Improvements.**

Where streets were paved and assessments were made against abutting property, improvement district bonds could be issued without submitting question of issuing bonds to electors or taxpayers of either improvement district or city, but where cost and expenses were to be paid by city, and bonds were to be issued for purpose of raising revenue to pay same, then such question was required to be submitted to electors and taxpayers of city. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

### **Ditches.**

In exercising its right to grade its streets, city could, if necessary, have removed ditches and required their reconstruction by pipelines laid beneath surface by company possessing franchise and easement for such ditches. *City of Nampa v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 779, 115 P. 979 (1911).



### **Equitable Relief on Void Bonds.**

In an action to cancel bonds and interest coupons, which had been adjudged to have been issued in violation of constitutional and statutory debt limitations, the holder of such bonds was not entitled to have equity direct an accounting and fix general debt liability against a village, since the bonds were void and not voidable, and equity could not and would not afford relief in violation of constitutional prohibitions. *Village of Heyburn v. Security Sav. & Trust Co.*, 55 Idaho 732, 49 P.2d 258 (1935).

### **Funding and Refunding Bonds.**

Where the bondholder was willing to accept payment in advance of maturity, former similar section clearly implied the authority for the village to issue and sell refunding revenue bonds, to provide the means of payment and redemption, before maturity, of the outstanding water and sewer revenue bonds, when such could be done without increasing the outstanding indebtedness and with a savings to those served by the work. Such bonds could be authorized, issued and sold either by ordinance or resolution and without a vote of the electors of the village. *Adams v. Pritchard*, 88 Idaho 325, 399 P.2d 252 (1965).

### **Nature of Power to Issue Bonds.**

Power of municipality to issue bonds for improvement of light and power plant was grant of authority from state and was required to be construed strictly against grantee. *Bradbury v. City of Idaho Falls*, 32 Idaho 28, 177 P. 388 (1918).

### **Parks.**

Grant to municipality of power to maintain park enjoined no absolute duty to do so. Maintenance of parks was primarily a private as opposed to a governmental function. *Boise Dev. Co. v. Boise City*, 30 Idaho 675, 167 P. 1032 (1917).

### **Statutory Provisions Incorporated in Bond.**

Provisions of former similar section referred to in ordinance and bonds were to be read into, and made part of, bonds, and they become binding on purchasers. *Neighbors of Woodcraft v. Rupert*, 51 Idaho 215, 4 P.2d 360 (1931).

**§ 50-1020. Waterworks — Light and power plants — Sewerage systems.** — Every city incorporated under the laws of the territory of Idaho or of the state of Idaho shall have power and authority to issue city coupon bonds in a sufficient amount to acquire, by purchase or otherwise, waterworks plants and water supply, light and power plants, storm sewers and sanitary sewerage systems, and to construct, enlarge, extend, repair, alter and improve such plants or systems notwithstanding the percentage limitation of the previous section. “Waterworks plants and water supply” include by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

The amount for which bonds may be issued for purposes as in this section provided shall be determined by the council and stated in the ordinance therefor, and shall be authorized in such amount as the city council shall deem necessary by one or more bond elections, called as provided in [section 50-1026, Idaho Code](#), or amendatory act.

### **History.**

1967, ch. 429, § 180, p. 1249; am. 1970, ch. 130, § 2, p. 305; am. 1979, ch. 304, § 2, p. 825.

## **CASE NOTES**

Decisions Under Prior Law [Power plant bond issues.](#)

[Proprietary capacity.](#)

[Village water supply.](#)

### **Power Plant Bond Issues.**

Proceeding of a city, relating to a municipal electric power generating plant and distribution system bond issue election and increasing liability of the city, was void under the Idaho statute and constitution, where the plan involved debt exceeding the amount authorized by ordinance and the voters of the city, and, therefore, the court would not modify its injunction restraining the city from entering into a contract with the federal emergency

administration of public works for the purpose of providing funds for the construction of the plant and system. *Washington Water Power Co. v. City of Coeur d'Alene*, 25 F. Supp. 795 (D. Idaho 1938).

### **Proprietary Capacity.**

A municipal corporation in the ownership, maintenance and operation of a municipal water system supplying water to its inhabitants for pay, acted in a proprietary, not in a governmental, capacity. *Gilbert v. Bancroft*, 80 Idaho 186, 327 P.2d 378 (1958).

### **Village Water Supply.**

Village had power and authority to contract for supply of water. *Jack v. Village of Grangeville*, 9 Idaho 291, 74 P. 969 (1903); *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

**§ 50-1021. Previous issues validated.** — All bonds authorized at any city election heretofore held, as provided in said section 50-1026[, Idaho Code], or acts amendatory thereof, for the purpose of acquiring adequate plants for such city by purchase or otherwise, and by enlarging, extending[, repairing, altering or improving any existing city water, light and power or sewage [sewerage] systems, shall be deemed to have been authorized for all or any of the purposes for which such bonds may hereafter be issued under this section, and all such bonds which at such election have been heretofore authorized, when issued and sold, are hereby declared to be legal and binding obligations of such city, provided all requirements of law have been fully complied with, and the same are hereby declared to be of like force and effect as if the city, at the time such election was called and held, had possessed all the power herein granted and conferred.

**History.**

1967, ch. 429, § 181, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The first bracketed insertion was added by the compiler to conform to the statutory citation style.

The second bracketed insertion was added by the compiler to clarify the sentence.

The third bracketed insertion was added by the compiler to supply the probable intended term.

**§ 50-1022. Joint services.** — In addition to the authority contained in the foregoing sections and in sections 67-2326 through and including 67-2333, Idaho Code, it shall be lawful for two (2) or more cities, so situated with reference to each other that it is practicable and convenient to furnish the said inhabitants thereof with water, power or sewerage from a single plant and system, to join in the construction or purchase of such plant or system upon a substantial compliance with the provisions of sections 50-1022 to 50-1025, Idaho Code, and not otherwise.

**History.**

1967, ch. 429, § 182, p. 1249; am. 1971, ch. 10, § 1, p. 22.

**§ 50-1023. Joint services — Agreement on apportionment. —**  
Whenever two (2) or more cities desire jointly to construct water, power or sewage [sewerage] systems, it shall be necessary for the councils to agree among themselves as to the kind and character of construction of the said plant and system, the amount of service to which each city shall be entitled, the approximate cost of such systems and the proportionate part thereof which shall be borne by each city, which proportionate part shall be as nearly just and equitable as possible, and shall be determined in such manner as may be agreeable to all concerned.

**History.**

1967, ch. 429, § 183, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “sewerage” was inserted by the compiler, as the probable intended term.

**§ 50-1024. Joint services — Bond election in each city.** — Whenever the proportionate share of the cost of such construction or purchase to be borne by each city has been determined, an election shall be held in each city as now provided by law in similar cases, for the purpose of determining whether or not coupon bonds shall be issued by such city in an amount equal to its proportionate share of the cost of such construction or purchase.

**History.**

1967, ch. 429, § 184, p. 1249.

**§ 50-1025. Joint services — Committee for construction or purchase.**

— If, in each of said cities the question of issuing bonds for the construction or purchase of such systems, plants and equipment shall have been favorably decided by the electors of such city, said bonds shall be issued as now provided by law, and the city councils of the cities in question shall meet, and organize and appoint a committee to be composed of their own members, upon which each of said cities shall have equal representation, for the purpose of constructing such plants and systems or for purchasing the same if such is available. The said committee shall have all necessary power to make contracts for the construction or purchase of such plants and systems and to bind the said cities as herein contemplated.

**History.**

1967, ch. 429, § 185, p. 1249.



**§ 50-1026. City bonds — Ordinance — Election.** — Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.

The ordinance shall also provide the date for holding an election that is in accordance with the dates authorized in [section 50-405, Idaho Code](#), which falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held. Notice shall be given in the official newspaper of the city by the county clerk in accordance with election law in title 34, Idaho Code. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: “In favor of issuing bonds to the amount of .... dollars for the purpose stated in Ordinance No. ....,” and “Against issuing bonds to the amount of .... dollars for the purpose stated in Ordinance No. ....” If at such election, held as provided in this chapter, two-thirds (2/3) of the qualified electors voting at such election assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho.

### **History.**

1967, ch. 429, § 186, p. 1249; am. 1971, ch. 25, § 7, p. 61; am. 2009, ch. 341, § 127, p. 993; am. 2011, ch. 11, § 25, p. 24.

## **STATUTORY NOTES**

### **Cross References.**

City elections, § 50-401 et seq.

Municipal bond law, § 57-201 et seq.

## **Amendments.**

The 2009 amendment, by ch. 341, in the first sentence in the last paragraph, inserted “the date” and “that is in accordance with the dates authorized in [section 50-405, Idaho Code](#),” deleted “thirty (30) days” preceding “notice,” and added “by the county clerk in accordance with election law in title 34, Idaho Code.”

## **Compiler’s Notes.**

The 2011 amendment, by ch. 11, divided the first former sentence of the second paragraph into two sentences, inserting “falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held” as the end of the present first sentence.

## **Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011 and approved February 23, 2011.

## **CASE NOTES**

[Constitutionality.](#)

[Projects financed under section.](#)

[Qualification of voters.](#)

[Constitutionality.](#)

Two thirds affirmative vote requirement of this section and Idaho [Const., Art. VIII, § 3](#), as applied to issuance by city of general obligation bonds to finance airport terminal and municipal swimming pool, was not offensive to [Equal Protection Clause, Fourteenth Amendment, U.S. Constitution](#), as violative of principle of one man, one vote. [Bogert v. Kinzer, 93 Idaho 515, 465 P.2d 639 \(1970\)](#), appeal dismissed, [403 U.S. 914, 91 S. Ct. 2224, 29 L. Ed. 2d 691 \(1971\)](#).

[Projects Financed Under Section.](#)

In a ground lease and power sales contract relating to the construction of a hydroelectric project, to be financed by the city under this section and § 50-1026A, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either Idaho [Const., Art. VIII, § 4](#) or Idaho [Const., Art. XII, § 4](#), prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale for adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. [Utah Power & Light Co. v. Campbell, 108 Idaho 950, 703 P.2d 714 \(1985\)](#).

### **Qualification of Voters.**

A compelling state interest in limiting the franchise in special elections to approve general obligation bonds to electors who are real property taxpayers prevails over *City of Phoenix v. Kolodziejski* which holds that property qualifications are invalid insofar as the franchise to vote in general obligation bond elections are concerned. [Muench v. Paine, 94 Idaho 12, 480 P.2d 196 \(1971\)](#). See [City of Phoenix v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 \(1970\)](#).

### **Decisions Under Prior Law**

Power plant bonds.

Qualifications of voters.

Refunding bonds.

Statement of purpose in ordinance.

Submission of several propositions.

Sufficiency of ballot.

Sufficiency of notice.

Test of sufficiency of notice or ordinance.

### **Power Plant Bonds.**

Proceeding of a city, relating to a municipal electric power generating plant and distribution system bond issue election, and increasing liability of

the city, was void under the Idaho statute and constitution, where the plan involved debt exceeding the amount authorized by ordinance and the voters of the city; therefore, the court would not modify its injunction restraining the city from entering into a contract with the federal emergency administration of public works for the purpose of providing funds for the construction of the plant and system. *Washington Water Power Co. v. City of Coeur d'Alene*, 25 F. Supp. 795 (D. Idaho 1938).

### **Qualifications of Voters.**

Provision of former similar section prescribing qualification of voter at municipal bond election did not apply to one who had paid registration fee on automobile but owned no other taxable property. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Purpose of former similar section was to restrict issuance of bonds to such issues as should be consented to by at least two thirds of those who were to be primarily affected by burden thereby imposed. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Resident of municipality owning no taxable property other than automobile on which he had paid registration fee was not qualified to vote at municipal bond election. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

### **Refunding Bonds.**

Provisions of former similar section were not intended to apply to issuance of refunding bonds of municipalities when issuance of such bonds would not create an additional indebtedness or liability of municipality. *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722 (1910).

### **Statement of Purpose in Ordinance.**

Provision of former similar section which required bonding ordinance to specify purpose of issuing proposed bonds was not complied with by an ordinance stating purpose of bonds to be "to fund the outstanding indebtedness of said city." *Coffin v. Richards*, 6 Idaho 741, 59 P. 562 (1899).

### **Submission of Several Propositions.**

Former similar section did not require a separate election ordinance for each proposed issue of municipal bonds. Different propositions for different objects may have been embodied in one ordinance, provided that each proposition was so clearly and distinctly submitted to electors of municipality that they could adopt or reject it, independently of others. *Platt v. City of Payette*, 19 Idaho 470, 114 P. 25 (1911).

Proposition could include but one purpose. *Corker v. Village of Mt. Home*, 20 Idaho 32, 116 P. 108 (1911).

Several distinct and independent purposes or propositions may be incorporated in one ordinance submitting question of issuing municipal bonds by a municipal corporation, providing such purposes were separately stated and voters at municipal election were given an opportunity to express their will upon each purpose or question as a separate and independent proposition or question. *Ostrander v. City of Salmon*, 20 Idaho 153, 117 P. 692 (1911).

Where, however, propositions to be determined were distinct and different propositions and were to be determined under different provisions of statute, there should be a separate ordinance with reference to each proposition. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

### **Sufficiency of Ballot.**

Ballot in exact language of former similar section was sufficient. *Brown v. Village of Grangeville*, 8 Idaho 784, 71 P. 151 (1903).

### **Sufficiency of Notice.**

Where mayor published proclamation for period of more than thirty days in a newspaper published in city, giving time and place when an election would be held to vote upon a proposition to issue bonds for municipal improvement, there was a sufficient compliance with former similar section. *Sommercamp v. Kelly*, 8 Idaho 712, 71 P. 147 (1902).

### **Test of Sufficiency of Notice or Ordinance.**

Test of sufficiency or validity of a notice or ordinance in this respect was whether voters at general election held pursuant to ordinance and notice could be reasonably presumed from notice itself and ordinance to have

understood the question submitted to them. *Corker v. Village of Mt. Home*, 20 Idaho 32, 116 P. 108 (1911).

**§ 50-1026A. City bonds — Pledge of revenues.** — (a) In the ordinance required in section 50-1026, Idaho Code, providing for the issuance of bonds of a city to be issued to acquire, improve, construct or extend a revenue producing system or facility to be owned and operated by the city, the city council may pledge, as an additional source of payment of such bonds, all or any part of the revenues derived or to be derived from rates, fees, tolls, or charges imposed for the services, facilities, or commodities furnished by the revenue producing system or facility to be so acquired, improved or extended.

(b) The notice of the election on bonds provided for in [section 50-1026, Idaho Code](#), shall describe any pledge of revenues made pursuant to this section. The proposition appearing on the ballot provided for in [section 50-1026, Idaho Code](#), shall indicate that the bonds are to be additionally secured by a pledge of revenues of designated revenue producing systems or facilities owned and operated by the city.

(c) The city council of a city may, in the ordinance required in [section 50-1026, Idaho Code](#), providing for the issuance of bonds to which revenues have been pledged as provided in this section, covenant to prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities, or commodities furnished by any revenue producing system or facility owned and operated by the city, all or a portion of the revenues of which have been pledged to bonds of the city as provided in this section, and may covenant to prescribe and collect such rates, fees, tolls or charges as will produce revenues sufficient, in addition to any other requirements of law, to pay all or a portion of the maturing principal of an interest on the bonds to which such revenues have been pledged.

(d) The provisions of [section 57-214, Idaho Code](#), to the contrary notwithstanding, bonds of a city to which revenues have been pledged as provided in this section, if issued to provide electric improvements or facilities, may be sold in such manner and at such price as the city council may in its discretion determine advisable, provided that such bonds may not be issued to acquire generation, transmission, or distribution facilities owned by other utilities without the consent of the utility owning the

improvement or facility. Bonds of a city to which revenues have been pledged as provided in this section may be issued in coupon or registered form. The city council may provide for the use of a portion of the proceeds of sale of bonds to which revenues have been pledged as provided in this section to pay interest on the bonds during the period to be covered by the construction of the facility or improvement for which the bonds are to be issued and to establish such reserves as the city council shall deem to be necessary.

(e) The provisions of [section 50-1041, Idaho Code](#), shall not apply to bonds of a city to which revenues have been pledged as provided in this section. Such bonds shall be deemed not to have been issued under the revenue bond act.

### **History.**

[I.C., § 50-1026A](#), as added by 1981, ch. 218, § 1, p. 405; am. 1982, ch. 366, § 1, p. 916.

## **STATUTORY NOTES**

### **Cross References.**

Revenue Bond Act, § 50-1027 et seq.

### **Compiler's Notes.**

Section 2 of S.L. 1981, ch. 218 read: "If any one or more sentences, clauses, phrases, provisions or sections of this act, or the application thereof to any set of circumstances, shall be held by final judgment of any court of competent jurisdiction to be invalid, the remaining sentences, clauses, phrases, provisions and sections hereof and the application of this act to other sets of circumstances shall nevertheless continue to be valid and effective, the legislature hereby declaring that all sentences, clauses, phrases, provisions and sections of this act are severable."

### **Effective Dates.**

Section 3 of S.L. 1981, ch. 218 declared an emergency. Approved April 6, 1981.

## **CASE NOTES**



## **Contracts Financed Under Section.**

In a ground lease and power sales contract relating to the construction of a hydroelectric project to be financed by the city under this section and § 50-1026, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either Idaho [Const., Art. VIII, § 4](#) or Idaho [Const., Art. XII, § 4](#), prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale for adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. [Utah Power & Light Co. v. Campbell, 108 Idaho 950, 703 P.2d 714 \(1985\)](#).

**§ 50-1027. Revenue bonds — Short title.** — The following fifteen (15) sections may be cited as the Revenue Bond Act.

**History.**

1967, ch. 429, § 187, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The section defines the revenue bond act as the “following fifteen (15) sections” of S.L. 1967, Chapter 429. As codified, those sections are §§ 50-1028 to 50-1035 and 50-1036 to 50-1042. Section 50-1035A was added by S.L. 1981, ch. 300, § 3.

**CASE NOTES**

Rates, fees and charges.

— Connection fees.

**Rates, Fees and Charges.**

When the rates, fees and charges of water and sewerage system conform to the statutory scheme set forth in the Idaho revenue bond act or are imposed pursuant to a valid police power, the charges are not construed as taxes. However, if the rates, fees and charges are imposed primarily for revenue raising purposes they are, in essence, disguised taxes and subject to legislative approval and authority. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because § 50-1033(b) allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city's wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995).

— Connection Fees.

The Idaho revenue bond act authorizes the collection of sewer connection fees, and it is clear that so long as the fees collected pursuant to the Idaho revenue bond act are allocated and budgeted in conformity with that act they will not be construed as taxes requiring approval of the electorate. However, if fees are collected under the guise of the act and allocated and spent otherwise, then the fees are primarily revenue raising and will be construed as taxes. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

**Cited** *Alliance v. City of Idaho Falls*, 742 F.3d 1100 (9th Cir. 2013).

#### Decisions Under Prior Law Attempted Evasion.

Former sections, containing the revenue bond act, did not authorize issuance of bonds for the construction and operation of a system for the distribution of gas and the creation of the cooperative in question, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance, were all parts of a plan and design provided to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes and to exercise powers not granted to a municipality. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

**§ 50-1028. Grant of authority.** — Any city acquiring, constructing, reconstructing, improving, bettering or extending any works pursuant to this act, shall manage such works in the most efficient manner consistent with sound economy and public advantage, to the end that the services of such works shall be furnished at the lowest possible cost. No city shall operate any works primarily as a source of revenue to the city, but shall operate all such works for the use and benefit of those served by such works and for the promotion of the welfare and for the improvement of the health, safety, comfort and convenience of the inhabitants of the city.

**History.**

1967, ch. 429, § 188, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.

**CASE NOTES**

**Fee and Rate System.**

A connection fee may be imposed by the police power or other statutory power and will be upheld by the courts if it is not unreasonable and not arbitrarily imposed. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

It is not the province of the court to determine how a municipality should allocate its fee and rate system. So long as the fees and rates charged conform to the statutory requirements and are reasonable, the fees, rates and charges will be upheld; the fees, rates and charges imposed by the municipality must be reasonable and produce sufficient revenue to support

the system at the lowest possible cost as required by the Idaho revenue bond act. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because § 50-1033(b) allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city's wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995).

Decisions Under Prior Law **Combination of systems.**

**Refunding bonds.**

### **Combination of Systems.**

Village was entitled to combine its water system and sewerage system and issue water and sewer revenue bonds with a pledge of the net revenue of both as sole security even though water system presently existed and sewerage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

### **Refunding Bonds.**

The savings to users by means of refunding the outstanding bonds at a lower rate of interest was in harmony with, and in furtherance of, the legislative policy declared in former similar section. *Adams v. Pritchard*, 88 Idaho 325, 399 P.2d 252 (1965).

**§ 50-1029. Definitions.** — For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term “works” shall include water systems, drainage systems, sewerage systems, recreation facilities, off-street parking facilities, airport facilities and air navigation facilities, electric systems or any of them as herein defined;

(b) The term “water system” shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes. The term “domestic uses or purposes” includes by way of example but not by way of limitation the use of water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic purposes;

(c) The term “sewerage system” shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term “off-street parking” shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term “airport facilities and air navigation facilities” shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such political subdivision of the state or owned or operated by a regional airport authority as defined by law, or wholly or partly within or without the state of Idaho, which are hereby deemed to be

for a public purpose, which facilities are to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, or to be held by the political subdivision of the state or regional airport authority as defined by law;

(f) The term “rehabilitate existing electrical generating facilities” shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plants, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances;

(g) The term “drainage system” shall include ditches, channels, creeks, ponds, intake structures, diversion structures, levies, storm sewers, pump stations, force mains, buildings, easements, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, treatment and disposal of any surface water, nuisance ground or subsurface water or stormwater of any city; and

(h) The term “electric system” shall include all electric generation, transmission and distribution facilities comprising a municipal electric system and used to supply electricity to customers located within the service area of such system established by law, including all properties, structures, facilities, equipment and appurtenances used in or useful for the generation, transmission and distribution of electricity. The term “electric system” includes, by way of example, but not by way of limitation, power plants for the generation of electricity by any means, substations, transformers, transmission lines, distribution lines, and all other facilities, equipment and appurtenances necessary or desirable in connection with the generation, transmission or distribution of electricity, including energy conservation, public purpose and environmental facilities, programs and measures, and joint electric facilities as defined in [section 50-342A, Idaho Code](#).

## **History.**

1967, ch. 429, § 189, p. 1249; am. 1969, ch. 193, § 1, p. 564; am. 1977, ch. 50, § 1, p. 91; am. 1978, ch. 176, § 1, p. 402; am. 1979, ch. 304, § 3, p. 825; am. 1991, ch. 311, § 1, p. 818; am. 2011, ch. 129, § 1, p. 358.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 129, in subsection (a), inserted “airport facilities and” and “electric systems”; in subsection (e), substituted “political subdivision of the state” for “city”, inserted “or owned or operated by a regional airport authority as defined by law” and added the language beginning “which are hereby deemed to be for a public purpose” through to the end; and added subsection (h).

### **Compiler’s Notes.**

Section 1 of S.L. 1978, ch. 330 purported to amend this section. Section 3 of that act provided that the act should take effect when the amendment to [Article VIII, § 3 of the Idaho Constitution](#) which was proposed by the Second Regular Session of the Forty-Fourth Idaho Legislature was ratified. However, the proposed constitutional amendment was defeated and, accordingly, the amendment to this section never took effect.

The term “this act” in the introductory paragraph refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.

### **Effective Dates.**

Section 2 of S.L. 1969, ch. 193 provided that the act should be in full force and effect on and after July 1, 1969.

## **CASE NOTES**

**Cited** [Alliance v. City of Idaho Falls, 742 F.3d 1100 \(9th Cir. 2013\).](#)



**§ 50-1030. Powers.** — In addition to the powers which it may now have, any city shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the city, or partially within or partially without the city, or within any part of the city, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights-of-way, contract rights, leases, franchises, approaches, dams and reservoirs; to sell excess or surplus water under such terms as are in compliance with [section 42-222, Idaho Code](#), and deemed advisable by the city; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the city, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as needed by such city for the purposes set forth in [section 50-1028, Idaho Code](#), as determined by the city; that the city shall not be made subject to any debt or liability thereby; and the city shall not pledge any of its faith or credit in aid to such lessee; (b) To rehabilitate existing electric generating facilities; (c) To exercise the right of eminent domain for any of the works, purposes or uses provided by this act, in like manner and to the same extent as provided in [section 7-720, Idaho Code](#); (d) To operate and maintain any works or rehabilitated existing electrical generating facilities within or without the boundaries of the city, or partially within or without the boundaries of the city, or within any part of the city; (e) To issue its revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works, or to finance, in whole or in part, the cost of the rehabilitation of existing electrical generating facilities; (f) To prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, or by such rehabilitated existing electrical generating facilities, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges; (g) To pledge an amount of revenue from such works or rehabilitated existing electrical generating

facilities, including improvement, betterment or extensions thereto, thereafter constructed or acquired, sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to [sections 50-1027 through 50-1042, Idaho Code](#), and the costs of any bond reserve funds or working capital deemed necessary in connection with the bond issue; (h) In the procurement of off-street parking sites, facilities, equipment and appurtenances, any city shall have power, in addition to those heretofore conferred, to pledge the net revenues to be derived from on-street parking facilities not otherwise pledged, to be combined with the rates, fees, tolls and charges to be derived from the operation of off-street parking facilities, after the payment of all operative and maintenance costs, to the payment of revenue bonds and interest thereon issued under the authority of the revenue bond act; (i) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the revenue bond act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancellation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included with the refunding bonds, as part of a single issue, or in combination in one (1) or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the revenue bond act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the revenue bond act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the

proceedings authorizing such bonds. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the revenue bond act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancellation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings; (j) To issue its revenue bonds for airport facilities and air navigation facilities to be held by the political subdivision of the state or regional airport authority as defined by law payable solely from fees, charges, rents, payments, grants or any other revenues derived from the airport or any of its facilities, structures, systems of projects, or from any land, facilities, buildings, projects or other property financed by such bonds; and to issue special facility bonds for airport facilities and air navigation facilities to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, to pledge to the payment of such bonds the fees, charges, rents, payments, grants, or any other revenues from the financed facilities and to secure such bonds by a deed of trust, mortgage or other lien on the financed property or by other security or credit enhancement; and neither airport revenue bonds nor special facility bonds shall be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

### **History.**

1967, ch. 429, § 190, p. 1249; am. 1971, ch. 112, § 1, p. 383; am. 1977, ch. 50, § 2, p. 91; am. 1987, ch. 206, § 1, p. 433; am. 2011, ch. 129, § 2, p. 358.

## **STATUTORY NOTES**

### **Cross References.**

Revenue bond act, § 50-1027 et seq.

### **Amendments.**

The 2011 amendment, by ch. 129, added subsection (j).

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term “this act” in subsection (c) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.

### **Effective Dates.**

Section 2 of S.L. 1971, ch. 112 declared an emergency. Approved March 15, 1971.

## **CASE NOTES**

[Condemnation.](#)

[Liability for charges incurred by tenants.](#)

[Rates, fees and charges.](#)

[Condemnation.](#)

City lacked extraterritorial eminent domain power to condemn easements located outside of its boundaries for the purpose of constructing electric transmission lines because there is no express grant of extraterritorial eminent domain power in the general eminent domain statutes, §§ 7-701, 7-720. Subsection (c) of this section indicates that the legislature did not intend to augment the scope of the eminent domain power beyond the

provisions of § 7-720, and the extraterritorial power of eminent domain to construct transmission lines was not implied or incident to the city's expressly granted powers. *Alliance v. City of Idaho Falls*, 742 F.3d 1100 (9th Cir. 2013).

### **Liability for Charges Incurred by Tenants.**

A city did not have implied power to collect from a property owner for charges incurred by tenants for water, sewer and garbage services. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

### **Rates, Fees and Charges.**

Where city based connection fees charged users of water and sewer system on formula termed "equity buy-in" and city annually was required to revalue the fees pursuant to the formula and all revenue from the fees was placed in a separate account and used only for replacement of existing facilities and equipment, no moneys were placed in the general operating funds of the city and none was used for expansion or improvement of the existing system, it was not necessary that a municipality have an election such as prescribed in *Const., Art. VIII, § 3* prior to changing the rates, fees or charges imposed in establishing the cost of public works services such as sewer or water connection fees. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact the connection fee may be higher in such city than in other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; thus, where ordinance specifically states that its intent is to "recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems and any extensions thereof," there is nothing in the ordinance that is not authorized by the Idaho revenue bond act and court found no evidence in the record

that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Cities can legally assess buy-in fees when those fees are reasonably connected to the actual costs such additional users will engender. The correct amount is to be calculated by dividing the net system replacement value by the number of users the system can support. The new user is charged the value of that portion of the system capacity that the new user will utilize at that point in time. *N. Idaho Bldg. Contrs. Ass'n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

So long as the fees collected pursuant to the Idaho revenue bond act are allocated and budgeted in conformity with that act they will not be construed as taxes. However, if fees are collected under the disguise of the act and allocated and spent otherwise, then the fees are primarily revenue raising and will be construed as taxes. *N. Idaho Bldg. Contrs. Ass'n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

**Cited** *Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

#### Decisions Under Prior Law

Acquisition of land.

Combination of systems.

Constitutionality.

Disconnection charge.

Removal of water company's pipes.

Sewage disposal.

#### **Acquisition of Land.**

A village was entitled to acquire land without the village for the purpose of constructing a sewage disposal and treatment plant. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

#### **Combination of Systems.**

Village was entitled to combine its water system and sewerage systems and issue water and sewer revenue bonds with a pledge of the net revenue

of both as sole security even though water system presently existed and sewerage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

### **Constitutionality.**

Provision of ordinance and former similar section granting authority to municipality to discontinue service to any one who failed to pay charges for water and sewer service is constitutional. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

### **Disconnection Charge.**

Provisions in ordinance for charge of \$1.00 for disconnection of service from municipal water and sewerage systems on default in payment and charge of \$1.00 for reconnection were valid since specific charges covered only the cost of disconnection and reconnection. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

### **Removal of Water Company's Pipes.**

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to regulation by the commission, since municipalities retain the right to control and maintain its streets and alleys. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

### **Sewage Disposal.**

As a municipal corporation, the village possessed legislatively delegated power to construct, operate and maintain sewage disposal facilities and to issue its bonds for the purpose of acquiring and constructing sewage treatment and disposal plants, together with lands and appurtenances. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

A sewage disposal facility, legal in its inception, was not a nuisance per se, and its location and the manner of its operation would determine whether it was a nuisance in fact. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

**§ 50-1031. Supervision of projects.** — The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works or rehabilitated existing electrical generating facilities under the provisions of this act, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the governing body of the city.

**History.**

1967, ch. 429, § 191, p. 1249; am. 1977, ch. 50, § 3, p. 91.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.



**§ 50-1032. Projects to be self-supporting.** — The council of a city issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by such works or rehabilitated existing electrical generating facilities, and shall revise such rates, fees, tolls or charges from time to time, to provide that all such works or rehabilitated existing electrical generating facilities shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient, (a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such works or rehabilitated existing electrical generating facilities, including reserves therefor.

**History.**

1967, ch. 429, § 192, p. 1249; am. 1977, ch. 50, § 4, p. 91.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.

**CASE NOTES**

[Fee structure.](#)

[Rates, fees and charges.](#)

**Fee Structure.**

The fees, rates and charges imposed by a municipality must be reasonable and must produce sufficient revenue to support the public works project at the lowest possible cost. The law only requires that the fee be

reasonably related to the benefit conveyed. *Manwaring Invs., LC v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017), overruled on other grounds, *N. Idaho Bldg. Contrs. Ass'n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

The legislature has not imposed exacting rate requirements upon localities. The law requires only that the fee be reasonably related to the benefit conveyed. Creating a fee structure for a wastewater system whereby every member of the general public would be charged only for his or her exact contribution of waste presumably could be established, but the system would be cumbersome and perhaps prohibitively expensive to maintain. *Manwaring Invs., LC v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017), overruled on other grounds, *N. Idaho Bldg. Contrs. Ass'n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

### **Rates, Fees and Charges.**

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact that the connection fee may be higher in such city than in other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; since the ordinance specifically states that its intent is to “recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems and any extensions thereof,” there was nothing in the ordinance that was not authorized by the Idaho revenue bond act and court found no evidence in the record that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because

the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho revenue bond act, the fees are not collected for general revenue raising purposes and are, therefore, not taxes requiring approval of the electorate; under these circumstances a municipality may collect such fees, rates or charges pursuant to the power granted in the Idaho revenue bond act to pay for maintenance, depreciation and replacement of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

#### Decisions Under Prior Law Disconnection Charge.

Provisions in ordinance for charge of \$1.00 for disconnection of service from municipal water and sewage systems on default in payment and charge of \$1.00 for reconnection were valid since specific charges covered only the cost of disconnection and reconnection. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

**§ 50-1033. Use of projects — Revenue.** — Any city issuing bonds under sections 50-1027 through 50-1042, Idaho Code, for the acquisition, construction, reconstruction, improvement, betterment or extension of any works or to rehabilitate existing electrical generating facilities, shall have the right to appropriate, apply or expend the revenue of such works or rehabilitated existing electrical generating facilities for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor; (b) to provide for all expenses of operation, maintenance, replacement and depreciation of such works or rehabilitated existing electrical generating facilities, including reserves therefor; (c) to pay and discharge notes, bonds or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such works or rehabilitated existing electrical generating facilities may have been pledged, charged or encumbered; (d) to pay and discharge notes, bonds or other obligations and interest thereon which do not constitute a lien, charge or encumbrance on the revenue of such works or rehabilitated existing electrical generating facilities, which may have been issued for the purpose of financing the acquisition, construction, reconstruction, improvement, betterment or extension of such works or to rehabilitate existing electrical generating facilities; and (e) provide a reserve for improvements to such works or rehabilitated existing electrical generating facilities. Unless and until full and adequate provision has been made for the foregoing purposes, no city shall have the right to transfer the revenue of such works or rehabilitated existing electrical generating facilities to its general fund.

**History.**

1967, ch. 429, § 193, p. 1249; am. 1977, ch. 50, § 5, p. 91.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in paragraph (c) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to

23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the “revenue bond act,” codified as §§ 50-1027 to 50-1042.

## CASE NOTES

Fee structure.

Maintenance, replacement and depreciation.

Ordinary and necessary expenses.

### **Fee Structure.**

The fees, rates and charges imposed by a municipality must be reasonable and must produce sufficient revenue to support the public works project at the lowest possible cost. The law only requires that the fee be reasonably related to the benefit conveyed. *Manwaring Invs., LC v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017), overruled on other grounds, *N. Idaho Bldg. Contrs. Ass’n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

The legislature has not imposed exacting rate requirements upon localities. The law requires only that the fee be reasonably related to the benefit conveyed. Creating a fee structure for a wastewater system whereby every member of the general public would be charged only for his or her exact contribution of waste presumably could be established, but the system would be cumbersome and perhaps prohibitively expensive to maintain. *Manwaring Invs., LC v. City of Blackfoot*, 162 Idaho 763, 405 P.3d 22 (2017), overruled on other grounds, *N. Idaho Bldg. Contrs. Ass’n v. City of Hayden*, 164 Idaho 530, 432 P.3d 976 (2018).

### **Maintenance, Replacement and Depreciation.**

Where city, after receiving an engineering report, selected a system in which the new user buys into a portion of the current value of the water and sewer system capacity and such method attempts to determine the current value of the system and then apportion a share of the value of that system to a new user, the methodology used to determine the value of the system is not unreasonable, nor is it unreasonable to charge a new user the value of that portion of the system capacity that the new user will utilize at that point in time; and the fact the connection fee may be higher in such city than in

other municipalities will not invalidate the fee as long as it is reasonable and is not primarily a source of revenue; since the ordinance specifically states that its intent is to “recover the costs of operating, maintaining, replacing, and depreciating the existing water and sewer systems and any extensions thereof,” there was nothing in the ordinance that is not authorized by the Idaho revenue bond act and the court found no evidence in the record that the fees charged by the city were arbitrary or unreasonable. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho revenue bond act, the fees are not collected for general revenue raising purposes and are, therefore, not taxes requiring approval of the electorate; under these circumstances a municipality may collect fees, rates or charges pursuant to the power granted in the Idaho revenue bond act to pay for maintenance, depreciation and replacement of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Because subsection (b) of this section allows the collection of revenues sufficient to cover certain costs, city under contract to treat other city’s wastewater did not violate the revenue bond act by charging a rate of return for wastewater treatment. *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 899 P.2d 411 (1995).

### **Ordinary and Necessary Expenses.**

A municipality may accumulate collected revenues from rates, charges or fees to fund the cost of replacement of system components in its public works projects which are ordinary and necessary. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

**§ 50-1034. Preliminary expenses.** — The city may provide for the payment of all necessary preliminary expenses actually incurred in the making of surveys, estimates of costs and revenues, employment of engineers and other employees, making of notices, taking of options, legal and clerical help and all other expenses necessary to be made and paid prior to the authorization for the issuance of such revenue bonds, provided, that no such expenditures shall be made or paid unless an appropriation has been made therefor in the same manner as is required by law for city funds. Any funds so expended by the city shall be fully reimbursed and repaid to the city out of the sale of such revenue bonds before any other disbursements are made therefrom, and the amount so advanced by the city to pay such preliminary expenses shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided.

**History.**

1967, ch. 429, § 194, p. 1249.

**RESEARCH REFERENCES**

**ALR.** — Excessiveness or inadequacy of attorney's fees in matters involving commercial and general business activities. **23 A.L.R.5th 241.**

**§ 50-1035. Ordinance prior to construction — Election.** — Before any city shall construct or acquire any works or rehabilitated existing electrical generating facilities under this chapter, the council of such city shall enact an ordinance or ordinances which shall, (a) set forth a brief and general description of the works or rehabilitated existing electrical generating facilities, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works or the rehabilitation of such existing electrical generating facilities; (d) direct that revenue bonds of the city shall be issued pursuant to this chapter in such amount as may be necessary to pay the cost of the works or rehabilitated existing electrical generating facilities; and (e) contain such other provisions as may be necessary in the proposal.

Such ordinance shall be passed, approved and published as provided by law for the enactment of general ordinances, but such city shall not incur or authorize in any year any indebtedness or liability under said ordinance exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors of such city voting at an election held for the purpose of authorizing or refusing to authorize the indebtedness or liability provided for in said ordinance; provided, that any city may, with the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such city, water systems, sewerage systems, water treatment plants, sewerage treatment plants, electric systems, or to rehabilitate existing electrical generating facilities, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities. In accordance with section 3E, **article VIII of the constitution** of the state of Idaho, any political subdivision of the state or regional airport authority as defined by law, operating an airport may issue revenue bonds payable solely from fees,



charges, rents, payments, grants or any other revenues derived from or relating to airport facilities and air navigation facilities to finance the costs of acquiring, constructing, installing and equipping airport facilities and air navigation facilities and such bonds shall not be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

Said ordinances shall provide for the holding of said election in accordance with the dates authorized in [section 50-405, Idaho Code](#), by the county clerk in accordance with the provisions of title 34, Idaho Code. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows: “In favor of issuing revenue bonds for the purposes provided by Ordinance No. . . . .”

“Against the issuance of revenue bonds for the purposes provided by Ordinance No. . . . .”

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance.

### **History.**

1967, ch. 429, § 195, p. 1249; am. 1973, ch. 40, § 1, p. 75; am. 1977, ch. 50, § 6, p. 91; am. 1981, ch. 300, § 2, p. 620; am. 2009, ch. 341, § 128, p. 993; am. 2011, ch. 129, § 3, p. 358.

## **STATUTORY NOTES**

### **Cross References.**

Revenue bond act, § 50-1027 et seq.

### **Amendments.**

The 2009 amendment, by ch. 341, in the first paragraph, twice substituted “chapter” for “act”; and rewrote the first sentence in the third paragraph,

which formerly read: “Said ordinances shall provide for the holding of said election and the giving of notice thereof by publication in the official newspaper of the city, said publication to be once a week for two (2) successive weeks prior to such election.”

The 2011 amendment, by ch. 129, in the second paragraph, inserted “electric systems” near the end of the first sentence and added the last sentence.

### **Compiler’s Notes.**

Section 2 of S.L. 1978, ch. 330 purported to amend this section. Section 3 of that act provided that the act should take effect when the amendment to [Article VIII, § 3 of the Idaho Constitution](#) which was proposed by the second regular session of the Forty-Fourth Idaho Legislature was ratified. However, the proposed constitutional amendment was defeated and, accordingly, the amendment to this section never took effect.

### **Effective Dates.**

Section 1 of S.L. 1973, ch. 40 declared an emergency. Approved February 26, 1973.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

## **CASE NOTES**

### **Requirement by Election.**

Where city based connection fees charged users of water and sewer system on formula termed “equity buy-in” and city annually was required to revalue the fees pursuant to the formula and all revenue from the fees was placed in a separate account and used only for replacement of existing facilities and equipment, no moneys were placed in the general operating funds of the city and none was used for expansion or improvement of the existing system it was not necessary that a municipality have an election such as prescribed in Idaho [Const., Art. VIII, § 3](#) prior to changing the rates, fees or charges imposed in establishing the cost of public works services such as sewer or water connection fees. [Loomis v. City of Hailey, 119 Idaho 434, 807 P.2d 1272 \(1991\)](#).

### Decisions Under Prior Law Laws Controlling Elections.

Revenue bond elections were controlled by laws of the state governing municipal elections and not by laws of the state relating to general obligation bond election, since village and taxpayers were not obligated to pay revenue bonds as in the case of general obligation bonds. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

**§ 50-1035A. Issuance of revenue bonds at rates of interest in excess of original specification.** — Any city may issue revenue bonds of the city bearing interest at such rate or rates as shall be prescribed by ordinance if:

(a) The principal amount of such revenue bonds does not exceed the then unissued balance of the principal amount of revenue bonds of the same type authorized at an election heretofore held in the city; (b) The revenue bonds are issued for the same purpose as that for which the unissued bonds were authorized; and (c) The bonds are issued in accordance with the provisions of the revenue bond act; provided, that an election shall have been held and conducted in the manner provided in [section 50-1035, Idaho Code](#), on the proposition of issuing revenue bonds under the provisions of this section at a rate or rates of interest in excess of the maximum rate of interest specified in the notice of election at which the unissued bonds were authorized and the proposition shall have been approved by the same percentage of the qualified electors of the city voting at the election as was required in [section 50-1035, Idaho Code](#), at the election at which the unissued bonds were authorized.

**History.**

[I.C., § 50-1035A](#), as added by 1981, ch. 300, § 3, p. 620.

**STATUTORY NOTES**

**Cross References.**

Revenue bond act, § 50-1027 et seq.

**Effective Dates.**

Section 4 of S.L. 1981, ch. 300 declared an emergency. Approved April 7, 1981.

**§ 50-1036. Bonds — Form — Conditions — Bond anticipation notes.**

— (a) All revenue bonds issued under authority of this act shall be sold, executed and delivered in the same manner as provided by the municipal bond law for the sale of general obligation negotiable coupon bonds, except that issues of revenue bonds may, in the discretion of the governing body, be sold at a private sale without advertising the same at competitive bidding and at a price above, at, or below par. The ordinance authorizing the issuance of said bonds shall prescribe the form of bonds. Said bonds shall bear interest at a rate or rates, payable annually, or at such lesser intervals as may be prescribed by ordinance; may be in one (1) or more series, bear such date or dates, mature at such time or times, and be redeemable before maturity at the option of the city; may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such ordinance may provide. Pending preparation of the bonds, interim certificates, in such form and with such provisions as the council may determine, may be issued. Said bonds and interim certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.

Notwithstanding the provisions of the municipal bond law, the governing body in any proceedings authorizing bonds under this act may:

- (1) provide for the initial issuance of one (1) or more bonds, in this act called “bond,” aggregating the amount of the entire issue;
- (2) make such provision for instalment payments of the principal amount of any such bond as it may consider desirable;
- (3) provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the indorsing of payments of interest on such bonds; and
- (4) further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the

request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(b) Whenever the governing body considers it advisable and in the interests of the city to anticipate the issuance of revenue bonds to be issued under this act, the governing body may from time to time and pursuant to appropriate resolution issue bond anticipation notes. Each resolution authorizing the issuance of bond anticipation notes shall:

- (1) describe the revenue bonds in anticipation of which the notes are to be issued; and
- (2) shall specify the principal amount of the notes, the rate of interest and maturity date of the notes, which maturity date shall be not to exceed five (5) years from the date of issue of such notes; but the time of payment of any such notes may be extended for a period of not exceeding three (3) years from their maturity date.

Bond anticipation notes shall be issued and sold from time to time in such manner and at such price as the governing body shall by resolution determine. Bond anticipation notes shall be in bearer form, except that the governing body may provide for the registration of the notes in the name of the owner either as to principal alone, or as to principal and interest, and on such terms and conditions as the governing body may determine in the authorizing resolution. Interest on bond anticipation notes may be made payable semiannually, annually, or at maturity. Bond anticipation notes may be made redeemable prior to maturity at the option of the governing body in the manner and upon the terms fixed by the resolution authorizing their issuance. Bond anticipation notes shall be executed and shall be in such form and have such details and terms as shall be provided in the authorizing resolution.

Contemporaneously with the issuance of the revenue bonds in anticipation of which bond anticipation notes are issued, all bond anticipation notes so issued, even though they may not then have matured, shall be paid, both as to principal and interest, to date of payment; and all such notes shall be surrendered and canceled.

Bond anticipation notes and the interest on them shall be secured by a pledge of the income and revenues derived by the city from the project to be undertaken with the proceeds of the bond anticipation notes and shall also be made payable from funds derived from the sale of the revenue bonds in anticipation of which the notes are issued.

Bond anticipation notes may be refunded by the issuance of other bond anticipation notes maturing within not more than eight (8) years from the date of the issuance of the initial issue of bond anticipation notes for which this refunding is to be effected.

### **History.**

1967, ch. 429, § 196, p. 1249; am. 1970, ch. 133, § 13, p. 23; am. 1970, ch. 219, § 1, p. 619; am. 1971, ch. 330, § 1, p. 1297; am. 1978, ch. 176, § 2, p. 402; am. 1981, ch. 300, § 1, p. 620.

## **STATUTORY NOTES**

### **Cross References.**

Municipal bond law, § 57-201 et seq.

### **Compiler's Notes.**

The term "this act" in three places in subsection (a) and in the introductory paragraph in subsection (b) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code. However, in the context of § 50-1027, the term may mean the "revenue bond act," codified as §§ 50-1027 to 50-1042.

### **Effective Dates.**

Section 3 of S.L. 1978, ch. 176 declared an emergency. Approved March 20, 1978.

## **CASE NOTES**

### **Decisions Under Prior Law**

### **Procedure.**

Former similar section specifically provided that revenue bonds issued under authority thereof should be sold, executed and delivered in the same manner as provided by the “municipal bond law” (§ 57-201 et seq.) and such bonds under § 57-218 could be authorized, issued and sold either by ordinance or resolution and without a vote of the electors of the village. [Adams v. Pritchard, 88 Idaho 325, 399 P.2d 252 \(1965\).](#)



**§ 50-1037. Bonds — Issuance — Terms — Conditions.** — Whenever revenue bonds are authorized to be issued, the city council shall by ordinance provide for the issuance thereof. The ordinance authorizing the issuance of said revenue bonds, for the purpose authorized, shall contain covenants as to:

(a) The purpose or purposes to which the proceeds of the sale of said bonds may be applied and the use and disposition thereof;

(b) The use and disposition of the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds are to be issued, including the creation and maintenance of reserves;

(c) The transfer from the general fund of the city to the account or accounts of the works or rehabilitated existing electrical generating facilities, of a sum or sums of money for furnishing the city or any of its departments, boards or agencies with the services, facilities and commodities of such works or rehabilitated existing electrical generating facilities;

(d) The issuance of other or additional bonds payable from the revenue of such works or rehabilitated existing electrical generating facilities;

(e) The operation and maintenance of such works or rehabilitated existing electrical generating facilities;

(f) The insurance to be carried thereon, the use and disposition of insurance moneys;

(g) Books of account and inspection and audit thereof;

(h) The appointment and duties of a trustee. Provisions may be made for the securing of the bonds by a trust indenture, but no such indenture shall convey, mortgage or create any lien upon property of the city;

(i) The terms and conditions upon which the holders thereof or any trustee therefor shall be entitled to the appointment of a receiver which receiver may enter and take possession of such works, operate and maintain the same, prescribe rates, fees, tolls or charges and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the city

itself might do. The provisions of this section and of any such ordinance shall be a contract with the holder of said bonds, and the duties of the city and its council under this section and under such ordinance, shall be enforceable by the holder by mandamus or other appropriate suit, action or proceeding at law or in equity.

**History.**

1967, ch. 429, § 197, p. 1249; am. 1977, ch. 50, § 7, p. 91.

**CASE NOTES**

Decisions Under Prior Law

**Appointment of Receiver.**

Provision in ordinance authorizing appointment of receiver for water and sewerage system on default in payment of principal or interest of revenue bonds was authorized under former similar section. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

**§ 50-1038. Validity of bonds.** — Any ordinance authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to section [sections] 50-1027 through 50-1042[, Idaho Code], which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

**History.**

1967, ch. 429, § 198, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The first bracketed insertion in this section was added by the compiler to correct the enacting legislation.

The second bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1039. Lien of bonds.** — All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have prior and paramount lien on the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds have been issued, except that where provision is made in the ordinance authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such ordinance, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such ordinance. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the Revenue Bond Act and the ordinance authorizing said bonds. Special facility bonds issued for airport facilities and air navigation facilities to be owned by private persons, associations or corporations and not by the political subdivision of the state or regional airport authority as defined by law shall be additionally secured by a deed of trust, mortgage or other lien on the facilities or other security or credit enhancement provisions.

**History.**

1967, ch. 429, § 199, p. 1249; am. 1970, ch. 219, § 1, p. 619; am. 1977, ch. 50, § 8, p. 91; am. 2011, ch. 129, § 4, p. 358.

**STATUTORY NOTES**

**Cross References.**

Revenue bond act, § 50-1027 et seq.

**Amendments.**

The 2011 amendment, by ch. 129, added the last sentence.

**CASE NOTES**

Decisions Under Prior Law Parity of Liens.

An ordinance was not invalid on the ground that it authorized issuance in the future of a second issue of revenue bonds to enjoy complete parity of lien with bonds of first issue providing certain required conditions were fulfilled, as priority of first issue was exclusively for the benefit of the holders of the bonds under first issue and same could be waived. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

**§ 50-1040. City not liable on bonds.** — Bonds issued pursuant to sections 50-1027 through 50-1042[, Idaho Code,] shall not be a debt of the city and the city shall not be liable thereon, nor shall they be payable out of any funds other than the revenue pledged to the payment thereof. Each bond issued under the Revenue Bond Act shall recite, in substance, that said bond, including interest thereon, is payable solely from the revenue pledge [pledged] to the payment thereof. Bonds may be issued under sections 50-1027 through 50-1042[, Idaho Code,] notwithstanding and without regard to any limitation or restriction on the amount or percentage of indebtedness, or of outstanding obligations of a city.

**History.**

1967, ch. 429, § 200, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Revenue bond act, § 50-1027 et seq.

**Compiler's Notes.**

The bracketed insertions near the beginning and near the end of the section were added by the compiler to conform to the statutory citation style.

The first bracketed insertion in the second sentence was added by the compiler to correct the enacting legislation.

**§ 50-1041. Tax levy to pay bonds prohibited.** — The provisions of [section] 57-203, Idaho Code, relating to the levy of taxes for the payment of bonds, shall not be applicable to bonds issued by a city under the Revenue Bond Act, and the principal or interest thereof shall not be charged upon the city issuing the same. The holder or holders of any bonds issued under the Revenue Bond Act shall not have the right to compel any exercise of the taxing power of the city to pay said bonds or the interest thereon.

**History.**

1967, ch. 429, § 201, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Revenue bond act, § 50-1027 et seq.

**Compiler's Notes.**

The bracketed word “section” in the first sentence was inserted by the compiler to conform to the statutory citation style.

**§ 50-1042. Projects and bonds exempt from taxation.** — So long as a city shall own any works or rehabilitated existing electrical generating facilities, the property and revenue of such works or rehabilitated existing electrical generating facilities shall be exempt from taxation. Bonds issued under sections 50-1027 through 50-1042, Idaho Code, and the income therefrom shall be exempt from taxation, except transfer and estate taxes.

**History.**

1967, ch. 429, § 202, p. 1249; am. 1977, ch. 50, § 9, p. 91.



**§ 50-1043. Short title.** — This act shall be known and may be cited as the “City Property Tax Alternatives Act of 1978.”

**History.**

1978, ch. 261, § 1, p. 567.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1978, Chapter 261, which is compiled as §§ 50-1043 to 50-1048.

**§ 50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement and collect certain city nonproperty taxes.** — The voters of any resort city with a population not in excess of ten thousand (10,000) according to the most recent census within the state of Idaho, organized under the general laws of the state, special charter, or a general incorporation act, are hereby given the freedom to authorize their city government to adopt, implement and collect one (1) or more local-option nonproperty taxes as provided herein. A resort city is a city that derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination city for an extended period of time. The corporate authorities of any such resort city are hereby given the freedom and authority to adopt, implement and collect one (1) or more local-option nonproperty taxes as provided herein, if approved by the required majority of city voters voting in an election as provided herein. No local-option nonproperty tax proposal may be presented to resort city voters for approval or modification for a period of eleven (11) months after an election to approve or disapprove such tax. The election may be a special election conducted for the exclusive purpose of approving or disapproving such tax or may be conducted as a part of any other special or general city election.

**History.**

1978, ch. 261, § 2, p. 567; am. 1981, ch. 328, § 1, p. 687; am. 2013, ch. 135, § 13, p. 307.

**STATUTORY NOTES**

**Cross References.**

General and special city elections, § 50-405.

**Amendments.**

The 2013 amendment, by ch. 135, substituted “eleven (11) months” for “one (1) year” in the next-to-last sentence.

**Effective Dates.**

Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

**§ 50-1045. City property tax relief fund.** — Any resort city may establish a city property tax relief fund into which may be placed all or any portion of revenues received from any nonproperty tax levied in accordance with the provisions of this act and such nonproperty tax revenues may be used to replace city property taxes in the ensuing fiscal year by the amount of nonproperty tax revenues placed in the city property tax relief fund if city voters have approved of such use of nonproperty tax revenues in the election authorizing such city nonproperty tax. Any resort city that receives more revenues from any local-option nonproperty tax than such city has budgeted shall establish a city property tax relief fund into which shall be placed all revenues received in excess of the budget amount and such excess revenues shall be used to replace city property taxes in the ensuing fiscal year by the amount of all excess revenues placed in said city property tax relief fund.

**History.**

1978, ch. 261, § 3, p. 567.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1978, Chapter 261, which is compiled as §§ 50-1043 to 50-1048.

**§ 50-1046. City local-option nonproperty taxes permitted by sixty per cent majority vote.** — A sixty per cent (60%) majority of the voters of any resort city voting on the question may approve and, upon such approval, any city may adopt, implement, and collect, subject to the provisions of this act, the following city local-option nonproperty taxes: (a) an occupancy tax upon hotel, motel, and other sleeping accommodations rented or leased for a period of thirty (30) days or less; (b) a tax upon liquor by-the-drink, wine and beer sold at retail for consumption on the licensed premises; and (c) a sales tax upon part or all of sales subject to taxation under chapter 36, title 63, Idaho Code.

**History.**

1978, ch. 261, § 4, p. 567; am. 1984, ch. 225, § 1, p. 542.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of the section refers to S.L. 1978, Chapter 261, which is compiled as §§ 50-1043 to 50-1048.

**CASE NOTES**

**Cited** *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 724, 708 P.2d 147 (1985).

**OPINIONS OF ATTORNEY GENERAL**

**Building Materials.**

The City of Sun Valley may impose its local option sales tax on building materials sales made in the city. OAG 91-6.

**Ski Lift Tickets.**

A vendor who sells a ski lift ticket from a location within the city limits of the City of Sun Valley has a responsibility to collect city local option sales tax from the purchaser of the ticket; the tax thus collected must be

remitted to the City of Sun Valley in the manner provided in the city's municipal sales tax ordinance. OAG 91-6.

**§ 50-1047. General provisions.** — Any ordinance assessing a tax pursuant to this act shall contain a finding by the local governing body of the city based upon evidence presented to it that the condition set forth in section 50-1044, Idaho Code, exists and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the city official designated in such ordinance or other such official contracting, pursuant to this act, with the city to provide collection services, and shall constitute revenue of the city available for any lawful corporate purpose approved by city voters subject to the provisions of this act. In any election, the ordinance submitted to city voters shall: (a) state and define the specific tax to be approved; (b) state the exact rate of the tax to be assessed; (c) state the exact purpose or purposes for which the revenues derived from the tax shall be used; and (d) state the duration of the tax. No tax shall be redefined, no rate shall be increased, no purpose shall be modified, and no duration shall be extended without subsequent approval of city voters. An ordinance adopting any local-option nonproperty tax authorized by this act may provide for separate identification of taxes as may be appropriate. The city clerk of any city adopting an ordinance pursuant to this act shall, immediately following approval of such ordinance, or any amendment thereto, forward a copy of said ordinance or amendment to the chairman of the state tax commission, and the chairman of the state board of tax appeals.

### **History.**

I.C., § 50-1047, as added by 1978, ch. 261, § 5, p. 567; am. 1979, ch. 221, § 1, p. 615; am. 1994, ch. 180, § 92, p. 420; am. 2003, ch. 32, § 25, p. 115.

## **STATUTORY NOTES**

### **Cross References.**

State board of tax appeals, § 63-3801 et seq.

State tax commission, § 63-101.

### **Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 1978, Chapter 261, which is compiled as §§ 50-1043 to 50-1048.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since the amendment was adopted, the amendment to this section by § 92 of S.L. 1994, ch. 180 became effective January 2, 1995.



**§ 50-1048. Coordination with county local-option nonproperty taxes.**

— In the event that counties are given local-option nonproperty tax authority, it is the intent of the legislature that such county local-option nonproperty taxes be coordinated with existing city local-option nonproperty taxes in the county.

**History.**

1978, ch. 261, § 6, p. 567.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 7 of S.L. 1978, ch. 261 read: **“Provisions ruled invalid.** — If any section, subdivision, paragraph, sentence, clause, or provision of this act shall be unconstitutional or ineffective for any reason, in whole or in part to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause, or provision shall on account thereof be deemed invalid or ineffective”.

**Effective Dates.**

Section 8 of S.L. 1978, ch. 261 provided that the act should take effect July 1, 1978.

**§ 50-1049. Collection and administration of local-option nonproperty taxes by state tax commission — Distribution.** — (a) A city which has levied a tax pursuant to section 50-1044, Idaho Code, may contract with the state tax commission for the collection and administration of such taxes in like manner and under the definitions, rules and regulations of the tax commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. A city which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of taxpayers relating to such tax. Alternatively, such city shall have authority to administer and collect such tax.

(b) All revenues collected by the tax commission pursuant to **section 50-1044, Idaho Code**, shall be distributed as follows: (1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated; (2) An amount of money equal to such fee as may be agreed upon between the commission and such city for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in paragraph (3) of this subsection; (3) All remaining moneys received pursuant to this chapter shall be placed in an account designated by the state controller and remitted monthly to the city levying such tax.

### **History.**

**I.C., § 50-1049**, as added by 1979, ch. 221, § 2, p. 615; am. 1986, ch. 73, § 7, p. 201; am. 1994, ch. 180, § 93, p. 420.

## **STATUTORY NOTES**

### **Cross References.**

State controller, § 67-1001 et seq.

State refund account, § 63-3067.

State tax commission, § 63-101.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180, provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 93 of S.L. 1994, ch. 180 became effective January 2, 1995.

Idaho Code Ch. 11

• [Title 50](#)», « [Ch. 11](#) »

## Chapter 11

# PLANNING COMMISSIONS

Sec.

50-1101 — 50-1106. [Repealed.]

**§ 50-1101 — 50-1106. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 203-208, p. 1249, were repealed by S.L. 1975, ch. 188, § 1, effective July 1, 1975. For present comparable law, see § 67-6501 et seq.



## Chapter 12

### ZONING

Sec.

50-1201 — 50-1210. [Repealed.]



**§ 50-1201 — 50-1210. [Repealed.]**

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 209-218, p. 1249, were repealed by S.L. 1975, ch. 188, § 1, effective July 1, 1975. For present comparable law, see § 67-6501 et seq.



## Chapter 13

### PLATS AND VACATIONS

Sec.

50-1301. Definitions.

50-1302. Duty to file.

50-1303. Survey — Monuments — Accuracy.

50-1304. Essentials of plats.

50-1305. Verification.

50-1306. Extraterritorial effects of subdivision — Property within the area of city impact — Rights of city to comment.

50-1306A. Vacation of plats — Procedure.

50-1307. Designation of townsite and addition — Necessity of distinctiveness — Limitations on rule.

50-1308. Approvals.

50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads.

50-1310. Filing and recording — Record of plats — Filing of copy.

50-1311. Indexing of plat records.

50-1312. Effect of acknowledging and recording plat.

50-1313. Dedication must be accepted.

50-1314. Enforcing execution of plat — Assessment of costs.

50-1315. Existing plats validated.

50-1316. Penalty for selling unplatted lots.

50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing.

50-1318. In absence of opposition — Grant of petition — Restrictions.

50-1319. In presence of opposition — Continuance of application — Hearing — When petition granted.

50-1320. Vesting of title on vacation.

50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limitation on rule — Prerequisites to order of vacation.

50-1322. Appeal from order granting or denying application to vacate.

50-1323. Limitation of actions to establish adverse rights or question validity of vacation.

50-1324. Recording vacations.

50-1325. Easements — Vacation of.

50-1326. All plats to bear a sanitary restriction — Submission of plans and specifications of water and sewage systems to state department of environmental quality — Removal or reimposition of sanitary restriction.

50-1327. Filing or recording of noncomplying map or plat prohibited.

50-1328. Rules for the administration and enforcement of sanitary restriction.

50-1329. Violation a misdemeanor.

50-1330. Jurisdiction of public streets and public rights of way within a highway district.

50-1331. Setting of interior monuments for a subdivision.

50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work.

50-1333. Recording of plats with only exterior monuments referenced.

50-1334. Review of water systems encompassed by plats.

**§ 50-1301. Definitions.** — The following definitions shall apply to terms used in this section and sections 50-1302 through 50-1334, Idaho Code.

(1) Basis of bearing: The bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or two (2) monumented corners that serves as the reference bearing for all other lines on the survey;

(2) Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;

(3) Functioning street department: A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system which qualifies such department to receive funds from the highway distribution account to local units of government pursuant to [section 40-709, Idaho Code](#);

(4) Idaho coordinate system: That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

(5) Land survey: Measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(6) Monument: A physical structure or object that occupies the position of a corner;

(7) Owner: The proprietor of the land (having legal title);

(8) Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

(9) Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

(10) Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

(11) Public land survey corner: Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of the interior, bureau of land management;

(12) Public right-of-way: Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

(13) Public street: A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

(14) Reference point: A special monumented point that does not occupy the same geographical position as the corner itself and where the spatial relationship to the corner is known and recorded and that serves to locate the corner;

(15) Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the director of the department of environmental quality or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

(16) Street: A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

(17) Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes

shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of this definition;

(18) Witness corner: A monumented point on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

### **History.**

1967, ch. 429, § 219, p. 1249; am. 1970, ch. 184, § 1, p. 533; am. 1971, ch. 329, § 1, p. 1294; am. 1988, ch. 175, § 1, p. 306; am. 1990, ch. 170, § 1, p. 367; am. 1992, ch. 262, § 1, p. 778; am. 1994, ch. 364, § 4, p. 1139; am. 1997, ch. 190, § 1, p. 517; am. 1998, ch. 220, § 1, p. 753; am. 1999, ch. 89, § 1, p. 290; am. 2010, ch. 256, § 1, p. 649; am. 2011, ch. 136, § 6, p. 383; am. 2014, ch. 58, § 1, p. 139; am. 2017, ch. 86, § 1, p. 232.

## **STATUTORY NOTES**

### **Cross References.**

Department of environmental quality, § 39-104.

Highway distribution account, § 40-701.

Idaho transportation department, § 40-501 et seq.

### **Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

### **Amendments.**

The 2010 amendment, by ch. 256, added subsection (1) and redesignated the subsequent subsections accordingly; and in subsection (14), inserted “and welfare” following “state board of health”.

The 2011 amendment, by ch. 136, added subsection (5) and redesignated the subsequent subsections accordingly; in subsection (14), substituted “Reference point” for “Reference monument,” “special monumented point” for “special monument” and “and where the spatial relationship to the corner is known and recorded and that serves to locate the corner” for “but whose spatial relationship to the corner is known and recorded and which

serves to witness the corner”; in subsection (17), substituted “this definition” for “the above definition” at the end; and, in subsection (18), deleted “usually” following “monumented point.”

The 2014 amendment, by ch. 58, substituted “director of the department of environmental quality” for “state board of health and welfare by its administrator” in subsection (15).

The 2017 amendment, by ch. 86, inserted “two (2) monumented” preceding “corners” in subsection (1).

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The U.S. general land office, referred to in subsection (11), was merged with the United State grazing service to become the bureau of land management in 1946. For more information on the bureau of land management, also referred to in subsection (11), see <https://www.blm.gov/>.

### **Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

Section 2 of S.L. 1970, ch. 184 declared an emergency. Approved March 13, 1970.

## **CASE NOTES**

[Naming and numbering streets.](#)

[Subdivision.](#)

[Naming and Numbering Streets.](#)

Since the purposes of the local planning act (§ 67-6501 et seq.) and the duties of those charged with its administration are closely related to the planning and zoning functions that have long been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since § 40-501 was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 — 50-1329 governing the filing of subdivision plats provide that all plats must be



presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in the planning act suggests a legislative intent for the planning and standard setting of the act in respect to highways to flow to highway districts by reason of the language of § 40-1611 and since § 67-6501 et seq. were enacted after §§ 40-1611 and 40-1615, the local planning act gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

### **Subdivision.**

County planning and zoning commission was not required to approve landowner's plot where plot was divided into three lots and met neither statutory requirements nor county requirements for a subdivision. *Tranmer v. Helmer*, 126 Idaho 88, 878 P.2d 787 (1994).

**Cited** *Monaco v. Bennion*, 99 Idaho 529, 585 P.2d 608 (1978); *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000); *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006); *Armand v. Opportunity Mgmt. Co.*, 155 Idaho 592, 315 P.3d 245 (2013).

**§ 50-1302. Duty to file.** — Every owner creating a subdivision, as defined in section 50-1301, Idaho Code, shall cause a land survey and a plat thereof to be made which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

**History.**

1967, ch. 429, § 220, p. 1249; am. 1997, ch. 190, § 2, p. 517; am. 2011, ch. 136, § 7, p. 383.

**STATUTORY NOTES**

**Amendments.**

The 2011 amendment, by ch. 136, substituted “as defined in [section 50-1301, Idaho Code](#)” for “as defined above” and “a land survey and a plat thereof to be made” for “the same to be surveyed and a plat made thereof.”

**CASE NOTES**

**Intention to Dedicate.**

In an action for a declaration that a road in a subdivision was private, the trial court properly struck an affidavit by the engineer who prepared the subdivision plat as inadmissible parol evidence; the affidavit was introduced to vary the terms of an unambiguous instrument, the subdivision plat. [Kepler-Fleenor v. Fremont County, 152 Idaho 207, 268 P.3d 1159 \(2012\).](#)

**Decisions Under Prior Law**

[Description of property in dispute.](#)

[Evidence.](#)

[Intention to dedicate.](#)

Unopened streets.

### **Description of Property in Dispute.**

In an action to resolve a boundary dispute, the descriptions of both parties' properties was by the lot numbers designated on the plat of the addition as authorized by former section governing filing of plats. *Nuterville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

### **Evidence.**

The admission of the testimony of an engineer and the plat prepared by him was improper without a foundation first being laid that he was actually ascertaining the original lines of the original plat or without a prior determination that the monuments of the original plat had been lost and could not be reestablished. *Nuterville v. McLam*, 84 Idaho 36, 367 P.2d 576 (1961).

### **Intention to Dedicate.**

First essential of a dedication was intention of owner of land to dedicate it, and such intention was usually shown by plat filed. Contrary intention could not be shown by something hidden in mind of landowner. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

### **Unopened Streets.**

There could be dedicated to public, land for street purposes which was not at time of dedication in condition to be traveled by public. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

**§ 50-1303. Survey — Monuments — Accuracy.** — The centerline intersections and points where the centerline changes direction on all streets, avenues, and public highways, and all points, witness corners and reference points on the exterior boundary where the boundary line changes direction shall be marked with magnetically detectable monuments the minimum size of which shall be five-eighths (5/8) of an inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument and all lot and block corners, witness corners and reference points for lot and block corners shall be marked with monuments conforming to the provisions of section 54-1227, Idaho Code. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but the block corners shall be monumented in order to permit the accurate identification of each burial lot within the cemetery. The monuments shall conform to the provisions of section 54-1227, Idaho Code. The locations and descriptions of all monuments within a platted cemetery shall be recorded upon the plat, and the courses and distances of all boundary lines shall be shown, but may be shown by legend. The survey for any plat shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of each area bounded by property lines within the survey of not more than one (1) part in five thousand (5,000).

**History.**

1967, ch. 429, § 221, p. 1249; am. 1997, ch. 190, § 3, p. 517; am. 1998, ch. 220, § 2, p. 753; am. 2008, ch. 378, § 1, p. 1023; am. 2011, ch. 136, § 8, p. 383.

**STATUTORY NOTES**

**Amendments.**

The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 136, in the section heading, deleted “Stakes and” preceding “Monuments”; in the first sentence, twice substituted “reference points” for “reference monuments”; rewrote the second sentence, which read: “Monuments shall be plainly and permanently marked such that measurements may be taken to the marks within one-tenth (1/10) of a foot”; and, in the last sentence, inserted “each are bounded by property lines within the survey of” and substituted “not more than one” for “not less than one part.”

**§ 50-1304. Essentials of plats.** — (1) All plats offered for record in any county shall be upon stable base drafting film with a minimum base thickness of 0.003 inches. The image thereon shall be by a photographic process or a process by which a copy is produced using an ink jet or digital scanning and reproduction machine with black opaque drafting film ink or fused toner that will ensure archival permanence. The copy and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink or toner is used, the surface shall be coated with a suitable substance, if required by the county where the plat is to be recorded, to assure permanent legibility. Plats shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey of the subdivision shall be drawn at a scale suitable to ensure the clarity of all lines, bearings and dimensions. In the event that any subdivision is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets. The required dedications, acknowledgments and certifications shall appear on any of the serially numbered sheets.

(2) The plat shall show: (a) the streets and alleys, with widths and courses clearly shown; (b) each street named; (c) all lots numbered consecutively in each block, and each block lettered or numbered, provided however, in a platted cemetery, that each block, section, district or division and each burial lot shall be designated by number or letter or name; (d) each and all lengths of the boundaries of each lot shall be shown, provided however, in a platted cemetery, that lengths of the boundaries of each burial lot may be shown by appropriate legend; (e) the exterior boundaries shown by distance and bearing; (f) descriptions of survey monuments; (g) point of beginning with ties to at least two (2) public land survey corner monuments in one (1) or more of the sections containing the subdivision, or in lieu of

public land survey corner monuments, to two (2) monuments recognized by the county surveyor; and also, if required by the city or county governing bodies, give coordinates based on the Idaho coordinate system; (h) the easements; (i) basis of bearings, bearing and length of lines, graphic scale of plat and north arrow; (j) subdivision name; and (k) narrative as described in [section 55-1906, Idaho Code](#).

(3) When coordinates in the Idaho coordinate system are shown on a plat, the plat must show the national spatial reference system monuments and their coordinates used as the basis of the survey; the zone; the datum and adjustment; and the combined adjustment factor and the convergence angle and the location where they were computed.

### **History.**

1967, ch. 429, § 222, p. 1249; am. 1978, ch. 106, § 1, p. 218; am. 1990, ch. 170, § 2, p. 367; am. 1997, ch. 190, § 4, p. 517; am. 2010, ch. 256, § 2, p. 649; am. 2015, ch. 48, § 1, p. 101; am. 2019, ch. 58, § 1, p. 146.

## **STATUTORY NOTES**

### **Cross References.**

Idaho coordinate system, § 55-1705.

### **Amendments.**

The 2010 amendment, by ch. 256, added the subsection (1) and (2) designations and subsection (3).

The 2015 amendment, by ch. 48, rewrote the first four sentences in subsection (1), which formerly read: “All plats offered for record in any county shall be prepared in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, by either a photographic process using a silver image emulsion or by use of a black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or

diazo process”; and, in subsection (2)(i), inserted “bearing and length of lines, graphic scale of plat and north arrow”.

The 2019 amendment, by ch. 58, added “and (k) narrative as described in [section 55-1906, Idaho Code](#)” at the end of subsection (2).

**Compiler’s Notes.**

For more on the national spatial reference system, referred to in subsection (3), see <https://www.ngs.noaa.gov/INFO/OnePagers/NSRSOnePager.pdf>.



**§ 50-1305. Verification.** — The county shall choose and require an Idaho professional land surveyor to check the plat and computations thereon to determine that the requirements herein are met, and said professional land surveyor shall certify such compliance on the plat. Such certification shall not relieve the professional land surveyor who prepared the plat from responsibility for the plat. For performing such service the county shall collect from the subdivider a fee as provided by local ordinance reasonably related to the cost of providing such service.

**History.**

1967, ch. 429, § 223, p. 1249; am. 1979, ch. 88, § 1, p. 214; am. 1989, ch. 102, § 1, p. 235; am. 1997, ch. 190, § 5, p. 517.

**§ 50-1306. Extraterritorial effects of subdivision — Property within the area of city impact — Rights of city to comment.** — All plats situate within an officially designated area of city impact as provided for in section 67-6526, Idaho Code, shall be administered in accordance with the provisions set forth in the adopted city or county zoning and subdivision ordinances having jurisdiction. In the situation where no area of city impact has been officially adopted, the county with jurisdiction shall transmit all proposed plats situate within one (1) mile outside the limits of any incorporated city which has adopted a comprehensive plan or subdivision ordinance to said city for review and comment at least fourteen (14) days before the first official decision regarding the subdivision is to be made by the county. Items which may be considered by the city include, but are not limited to, continuity of street pattern, street widths, integrity and continuity of utility systems and drainage provisions. The city's subdivision ordinance and/or comprehensive plan shall be used as guidelines for making the comments hereby authorized. The county shall consider all comments submitted by the city. Where the one (1) mile area of impact perimeter of two (2) cities overlaps, both cities shall be notified and allowed to submit comments.

**History.**

1967, ch. 429, § 224, p. 1249; am. 1979, ch. 88, § 2, p. 214; am. 1999, ch. 391, § 1, p. 1088.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1999, ch. 391 declared an emergency. Approved March 29, 1999.

**CASE NOTES**

**In General.**

This section defines the respective jurisdictions of a city and a county that share contiguous boundaries but have not acted to create an area of impact, by outlining an approval procedure to be followed when a subdivision is located within one mile of the city limits. *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000).

**Cited** *Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).

**§ 50-1306A. Vacation of plats — Procedure.** — (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof must petition the city council if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of the county. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) If a petition to vacate is brought before county commissioners, and the plat or part thereof which is the subject of the petition is located within one (1) mile of the boundaries of any city, the county commissioners shall cause written notice of the public hearing on the petition to be given to the mayor or chief administrative officer of the city by regular mail at least thirty (30) days prior to the date of public hearing.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur

upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in [section 40-203, Idaho Code](#).

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

### **History.**

[I.C., § 50-1306A](#), as added by 1971, ch. 6, § 1, p. 16; am. 1985, ch. 244, § 1, p. 575; am. 1989, ch. 247, § 1, p. 596; am. 1992, ch. 262, § 2, p. 778; am. 1994, ch. 364, § 5, p. 1139; am. 1997, ch. 190, § 6, p. 517; am. 1998, ch. 220, § 3, p. 753; am. 2014, ch. 21, § 1, p. 27; am. 2014, ch. 137, § 2, p. 372.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 137, substituted “as provided in [section 40-203, Idaho Code](#)” for “as provided in subsection (4) of this section” at the end of subsection (6).

The 2014 amendment, by ch. 21, in subsection (1), deleted “which is inside or within one (1) mile of the boundaries of any city” preceding “must petition” and substituted “if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of

the county” for “to vacate” in the first sentence; rewrote subsection (4), which formerly read: “When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners”; and deleted “as provided in subsection (4) of this section” at the end of subsection (6).

### **CASE NOTES**

**Cited** *Williams Lake Lands, Inc. v. LeMoyne Dev., Inc.*, 108 Idaho 826, 702 P.2d 864 (Ct. App. 1985).

**§ 50-1307. Designation of townsite and addition — Necessity of distinctiveness — Limitations on rule.** — Plats of towns, subdivisions or additions must not bear the name of any other town or addition in the same county, nor can the same word or words similar or pronounced the same, be used in making a name for said town or addition, except the words city, place, court, addition or similar words, unless the same is contiguous and laid out and platted by the same party or parties platting the addition bearing the same name, or a party files and records the written consent of the party or parties who platted the addition bearing the same name. All plats of the same name must continue the block numbers of the plat previously filed.

**History.**

1967, ch. 429, § 225, p. 1249.

**§ 50-1308. Approvals.** — (1) If a subdivision is not within the corporate limits of a city, the plat thereof shall be submitted, accepted and approved by the board of commissioners of the county in which the tract is located in the same manner and as herein provided. If the city or county has established a planning commission, then all plats must be submitted to said commission in accordance with provisions of chapter 65, title 67, Idaho Code. No plat of a subdivision requiring city approval shall be accepted for record by the county recorder unless said plat shall have first been submitted to the city and has been accepted and approved and shall have written thereon the acceptance and approval of the said city council and bear the signature of the city engineer and city clerk. No plat of a subdivision shall be accepted for record by the county recorder unless said plat has been certified, within thirty (30) days prior to recording, by the county treasurer of the county in which the tract is located. The county treasurer shall not withhold certification for any reason except for county property taxes due, but not paid, upon the property included in the proposed subdivision.

(2) Plats resulting from the exercise of any right granted under the provisions of sections 50-1314 and 63-210(2), Idaho Code, may be accepted for record and recorded by the county recorder without being certified by the county treasurer and the record of any such plat which has previously been recorded without being certified by the county treasurer shall not be invalid or defective because of not having been so certified by the county treasurer.

### **History.**

1967, ch. 429, § 226, p. 1249; am. 1979, ch. 286, § 1, p. 731; am. 1981, ch. 304, § 1, p. 626; am. 1981, ch. 317, § 1, p. 661; am. 1996, ch. 322, § 52, p. 1029; am. 1997, ch. 190, § 7, p. 517.

## **STATUTORY NOTES**

### **Effective Dates.**



Section 2 of S.L. 1981, ch. 304 declared an emergency and provided that the act should be in full force and effect on and after approval and retroactively to January 1, 1981. Approved April 7, 1981.

## **CASE NOTES**

Acceptance of plat.

Approval denied.

Subdivision application.

### **Acceptance of Plat.**

While § 40-1611 appears to grant highway districts exclusive jurisdiction over highways within their districts, it does not give them the power or duty to accept subdivision plats; under the code as it existed when subdivision was created (1973), the county clearly had the authority to accept and approve the plat and the direct effect of that acceptance thoroughfare was to dedicate it to the public use. *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

### **Approval Denied.**

County planning and zoning commission was not required to approve landowner's plot where plot was divided into three lots and met neither statutory requirements nor county requirements for a subdivision. *Tranmer v. Helmer*, 126 Idaho 88, 878 P.2d 787 (1994).

### **Subdivision Application.**

The power to approve a subdivision application in the impact area resides exclusively with the county, and the city's action in reviewing the subdivision application is advisory only and is not a prerequisite to action by the county. *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000).

**§ 50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads.** — 1. The owner or owners of the land included in said plat shall make a certificate containing the correct legal description of the land, with the statement as to their intentions to include the same in the plat, and make a dedication of all public streets and rights-of-way shown on said plat, which certificate shall be acknowledged before an officer duly authorized to take acknowledgments and shall be indorsed on the plat. The professional land surveyor making the survey shall certify the correctness of said plat and he shall place his seal, signature and date on the plat.

2. No dedication or transfer of a private road to the public can be made without the specific approval of the appropriate public highway agency accepting such private road.

3. Highway districts shall not have jurisdiction over private roads designated as such on subdivision plats and shall assume no responsibility for the design, inspection, construction, maintenance and/or repair of private roads.

### **History.**

1967, ch. 429, § 227, p. 1249; am. 1988, ch. 175, § 2, p. 306; am. 1989, ch. 102, § 2, p. 235; am. 1992, ch. 262, § 3, p. 778; am. 1997, ch. 190, § 8, p. 517.

## **STATUTORY NOTES**

### **Effective Dates.**

Section 3 of S.L. 1988, ch. 175 declared an emergency. Approved March 26, 1988.

## **CASE NOTES**

[Dedication of streets.](#)

[Owner.](#)

Public roads.

### **Dedication of Streets.**

Sales of lots by reference to lot and block following recording of a plat constitutes a dedication of the streets and alleys to public use. *Boise City ex rel. Amyx v. Fails*, 94 Idaho 840, 499 P.2d 326 (1972).

Where the plat of a subdivision, which was compulsorily recorded by a developer, depicts no public streets or rights-of-way, there can be no statutory dedication of the roads. *Lattin v. Adams County*, 149 Idaho 497, 236 P.3d 1257 (2010).

When an owner of land plats the land, files the plat for record, and sells lots by reference to the recorded plat, a dedication of public areas indicated by the plat is accomplished. However, just filing the plat is not enough: public dedication also requires that the plat show the owners' intent clearly and explicitly. *Rowley v. Ada County Highway Dist.*, 156 Idaho 275, 322 P.3d 1008 (2014).

### **Owner.**

Leasehold interests are not included within the meaning of "owner" under this section. *Allen v. Blaine County*, 131 Idaho 138, 953 P.2d 578 (1998).

Landowners were not entitled to an interest in a plat's common area because the plat was void: (1) although non-owners executed the plat, owners did not ratify the plat, so the plat granted no interest, and (2) platted land could not be dedicated by common law to owners of unplatted land. *Armand v. Opportunity Mgmt. Co.*, 155 Idaho 592, 315 P.3d 245 (2013).

### **Public Roads.**

In a quiet title action in which residents of subdivision sought to enjoin defendant from using two roads for access to his residence, defendant did not show that road and 60-foot easement he used to gain access to his property were public access roads, nor were the requirements under this section and § 50-1313 for the creation of a public road met. *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000).

**Cited** *Armand v. Opportunity Mgmt. Co.*, 141 Idaho 709, 117 P.3d 123 (2005).

## Decisions Under Prior Law

Failure of title.

Spasmodic travel.

### **Failure of Title.**

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

### **Spasmodic Travel.**

Strip of land did not become a public street by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years and the presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

**§ 50-1310. Filing and recording — Record of plats — Filing of copy.**

— (1) All approved plats of subdivisions shall, upon the payment of the required fees, be filed by the county clerk or county recorder, and such filing with the date thereof shall be endorsed thereon. The plat or opaque copy thereof shall then be bound or filed with other plats of like character in a proper book or file designated as “Records of Plats.”

(2) At the time of filing such plat, the owner or his representative shall also file with the county clerk or county recorder one (1) copy thereof. The plat media and copy process shall be as provided in [section 50-1304, Idaho Code](#). The original plat shall be stored for safekeeping in a reproducible condition by the county. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. Full scale copies thereof shall be made available to the public, at the cost allowed in [section 31-3205, Idaho Code](#), by the county recorder.

**History.**

1967, ch. 429, § 228, p. 1249; am. 1978, ch. 106, § 2, p. 218; am. 1993, ch. 343, § 1, p. 1282; am. 1997, ch. 190, § 9, p. 517; am. 2013, ch. 263, § 1, p. 648; am. 2015, ch. 48, § 2, p. 101.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 263, added the subsection designations; and, in subsection (2), inserted “or a process by which a copy is produced using a copy machine or by digital scanning and reproduction using black opaque drafting film ink” in the third sentence and inserted the fourth sentence.

The 2015 amendment, by ch. 48, in subsection (2), substituted the present second sentence for the former second, third, and fourth sentences, which read: “The copy shall be upon stable base drafting film with a minimum base thickness of 0.003 inches. The image thereon shall be by a photographic process using a silver image emulsion, or a process by which

a copy is produced using a copy machine or by digital scanning and reproduction using black opaque drafting film ink. If a copy machine or ink is used, the surface shall be coated with a suitable substance to assure permanent legibility. The copy and image thereon shall be waterproof, tear-resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence.”

**Effective Dates.**

Section 2 of S.L. 2013, ch. 263 declared an emergency. Approved April 3, 2013.

**§ 50-1311. Indexing of plat records.** — The said books of “record of plats” shall be provided in the front part thereof with indices, in which shall be duly entered in alphabetical order all maps, plats and diagrams recorded therein, and when so filed, bound and indexed, shall be the legal record of all such maps, plats, diagrams, dedication and other writings.

**History.**

1967, ch. 429, § 229, p. 1249.

**§ 50-1312. Effect of acknowledging and recording plat.** — The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for public streets or other public use, or as is thereon dedicated to charitable, religious or educational purposes; provided, however, that in a county where a highway district exists and is in operation no such plat shall be accepted for recording by the county recorder unless the acceptance of said plat by the commissioners of the highway district is endorsed thereon in writing.

**History.**

1967, ch. 429, § 230, p. 1249; am. 1978, ch. 78, § 1, p. 153; am. 1992, ch. 262, § 4, p. 778.

**STATUTORY NOTES**

**Cross References.**

Recording surveys, §§ 55-1901 et seq.

**CASE NOTES**

[Acceptance of plats.](#)

[Dedication of streets and alleys.](#)

[Land survey.](#)

[Statutory scheme governing dedication.](#)

**Acceptance of Plats.**

While § 40-1611 appears to grant highway districts exclusive jurisdiction over highways within their districts, it does not give them the power or duty to accept subdivision plats; under the code as it existed when subdivision was created (1973), the county clearly had the authority to accept and approve the plat and the direct effect of that acceptance thoroughfare was to dedicate it to the public use. [Harshbarger v. County of Jerome, 107 Idaho 805, 693 P.2d 451 \(1984\).](#)



## **Dedication of Streets and Alleys.**

Sales of lots by reference to lot and block following recording of a plat constitutes a dedication of the streets and alleys to public use. [Boise City ex rel. Amyx v. Fails, 94 Idaho 840, 499 P.2d 326 \(1972\).](#)

The recording of the plat which referenced the segments of land at issue constituted a dedication of public roadway easements, through the segments, which the original developer had been permitted to delay improving until a later date. In addition, the language of this section makes it clear that the recording of a plat denominating a public street transfers an interest equivalent to a fee simple. [Volco, Inc. v. Lickley, 126 Idaho 709, 889 P.2d 1099 \(1995\).](#)

District court's finding that a boundary by agreement existed was not clearly erroneous because a fence had been standing between two properties for more than 50 years; moreover, the parties involved were adjoining landowners, despite being separated by a dedicated road, because the parties had an ownership interest up to the center of the dedicated street. [Neider v. Shaw, 138 Idaho 503, 65 P.3d 525 \(2003\).](#)

When an owner of land plats the land, files the plat for record, and sells lots by reference to the recorded plat, a dedication of public areas indicated by the plat is accomplished. However, just filing the plat is not enough: public dedication also requires that the plat show the owners' intent clearly and explicitly. [Rowley v. Ada County Highway Dist., 156 Idaho 275, 322 P.3d 1008 \(2014\).](#)

## **Land Survey.**

The recording of a subdivision plat is intended to partition property and creates legally-recognized lots within the subdivision. A land survey does not subdivide land, nor does the filing of such a survey indicate with what intent the landowner surveyed his property. [State v. Bilbao, 130 Idaho 500, 943 P.2d 926 \(1997\).](#)

Magistrate erred in dismissing complaint against defendant for misdemeanor illegal subdivision, after concluding the statute of limitations had run because the allegedly illegal subdivision occurred in 1985 with the filing of a land survey. The record before the magistrate did not support his conclusion that the allegedly criminal act occurred in 1985, and not later,

because the document filed by defendant in 1985 was a land survey, which does not subdivide land, and not a plat. *State v. Bilbao*, 130 Idaho 500, 943 P.2d 926 (1997).

### **Statutory Scheme Governing Dedication.**

The statutory scheme governing the dedication of real property to the public involves two steps, the first of which is an offer by the owner to “dedicate” the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is evidenced by the acknowledgement and recording of a plat under this section, and the acceptance by action of a public body “accepting” and “confirming” the “dedication,” as required by § 50-1313. *Worley Hwy. Dist. v. Yacht Club of Coeur d’Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

#### Decisions Under Prior Law

Completion of dedication.

Effect of dedication.

Title of municipality.

Validation of dedication.

### **Completion of Dedication.**

Dedication was completed when plat was filed in proper office and lots sold with reference to it. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

### **Effect of Dedication.**

By dedication of plat, public acquired only an estate necessary to adequate accommodation of public, consisting of an easement for free and unobstructed use of street and not a title in fee simple. *Shaw v. Johnston*, 17 Idaho 676, 107 P. 399 (1910).

By filing of a plat and selling of lots with reference thereto, dedicator and grantor was estopped from revoking dedication of any streets marked thereon. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

Where owner of land plats streets and blocks, dedicating streets to public, and plat shows a strip of sand beach between platted streets, etc., and an

abutting lake, beach was not dedicated. *Deffenbaugh v. Washington Water Power Co.*, 24 Idaho 514, 135 P. 247 (1913).

While property owners, abutting on street which predecessors in title had dedicated to city or state for use as such, owned fee of land to center of street, the city or state had a complete right to use of such land for street purposes. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

### **Title of Municipality.**

Effect of recording plat was to vest in city determinable fee for public use of surface of street. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

Where portion of street was vacated in recorded plat, city could not convey fee therein to owner of abutting land not in plat. *Mochel v. Cleveland*, 51 Idaho 468, 5 P.2d 549 (1930).

### **Validation of Dedication.**

A statute validating existing plats and a statute providing that an acknowledgment and recording of plats was equivalent to a deed in fee simple of such portion of premises platted as were set apart for streets or other public use impressed upon the plat theretofore filed a dedication to the public of streets outlined in such plat with the same effect as though dedication had been originally placed upon such plat. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

**§ 50-1313. Dedication must be accepted.** — No street or alley or highway hereafter dedicated by the owner to the public shall be deemed a public street, highway or alley, or be under the use or control of said city or highway district unless the dedication shall be accepted and confirmed by the city council or by the commissioners of the highway district. An acceptance imposes no obligation or liability upon the city council or highway district until the street, highway or alley is declared to be open for public travel.

**History.**

1967, ch. 429, § 231, p. 1249; am. 1978, ch. 78, § 2, p. 153; am. 1992, ch. 55, § 2, p. 160.

**STATUTORY NOTES**

**Cross References.**

Recordation and dedication of highways, § 40-2302.

**Effective Dates.**

Section 3 of S.L. 1978, ch. 78 declared an emergency. Approved March 10, 1978.

**CASE NOTES**

[Creation of public road.](#)

[Statutory scheme governing dedication.](#)

**Creation of Public Road.**

In a quiet title action in which plaintiffs, residents of subdivision, sought to enjoin defendant from using two roads for access to his residence, defendant did not show that road and 60-foot easement he used to gain access to his property were public access roads, nor were the requirements under this section and § 50-1309 for the creation of a public road met. [Stafford v. Klosterman, 134 Idaho 205, 998 P.2d 1118 \(2000\).](#)

## **Statutory Scheme Governing Dedication.**

The statutory scheme governing the dedication of real property to the public involves two steps, the first of which is an offer by the owner to “dedicate” the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is evidenced by the acknowledgement and recording of a plat under § 50-1312, and the acceptance by action of a public body “accepting” and “confirming” the “dedication,” as required by this section. *Worley Hwy. Dist. v. Yacht Club of Coeur d’Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

**Cited** *Pugmire v. Johnson*, 102 Idaho 882, 643 P.2d 832 (1982); *Harshbarger v. County of Jerome*, 107 Idaho 805, 693 P.2d 451 (1984).

### Decisions Under Prior Law

Liability from five-year use.

Private driveways.

Spasmodic travel.

Title defective.

## **Liability From Five-Year Use.**

Where a street had been used by the public and worked by the city for at least five years, the city, by reason of the implied invitation to the public to use it as a street, became liable for injury to a traveler from obstruction negligently placed therein. *Gallup v. Bliss*, 44 Idaho 756, 262 P. 154 (1927).

## **Private Driveways.**

Private driveways used by public within municipality were subject to municipal regulation for safety of public, whether dedicated or accepted by ordinance. *Crossler v. Safeway Stores*, 51 Idaho 413, 6 P.2d 151 (1931).

## **Spasmodic Travel.**

Strip of land did not become a public street by use where evidence showed only a small portion of strip used for spasmodic travel for period of two years and the presence of bush, trees, and fence on strip for long period of time. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

## **Title Defective.**

Alleged public street designated as such on a recorded plat was not a public street by dedication where strip of land designated as public street was not owned by the party recording the plat at the time the plat was filed. *Worthington v. Koss*, 72 Idaho 132, 237 P.2d 1050 (1951).

**§ 50-1314. Enforcing execution of plat — Assessment of costs. —**

Whenever the owners of any tract of land have divided and sold or conveyed five (5) or more parts thereof, or invested the public with any right therein, and have failed and neglected to execute and file a plat for record, as provided in sections 50-1301 through 50-1313, Idaho Code, the county recorder, when instructed by the board of county commissioners, shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat; if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat within thirty (30) days after the issuance of such notice, the recorder shall cause to be made a plat of such tract and any surveying necessary therefor. Said plat shall be prepared in accordance with requirements in sections 50-1301 through 50-1325, Idaho Code, and in addition, be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record, and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves.

A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the next session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount pro rata upon all several lots or parcels of said subdivided tract; said assessment may be billed to the property owner and, if not paid as requested, shall be collected with, and in like manner as the property taxes, and shall go to the county current expenses fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover from the said original owners or proprietors, said cost and expense of preparing and recording said plat.

**History.**

1967, ch. 429, § 232, p. 1249; am. 2011, ch. 120, § 1, p. 330.

**STATUTORY NOTES**

## **Amendments.**

The 2011 amendment, by ch. 120, in the first sentence in the first paragraph, substituted “as provided in [sections 50-1301 through 50-1313, Idaho Code](#), the county recorder, when instructed by the board of county commissioners” for “as provided in the thirteen (13) foregoing sections of this act, the county recorded”; and, in the last paragraph, inserted “may be billed to the property owner and, if not paid as requested” and substituted “property taxes, and shall go to the county current expenses fund” for “general taxes, and shall go to the general county fund.”

## **CASE NOTES**

### **Estoppel.**

The mortgagor was estopped from arguing that the replat of the property was invalid because it did not contain the owners’ signatures, and was not prepared and filed in accordance with this section, where the mortgagor was responsible for getting the replat properly recorded, acquiesced in the recording procedure and accepted the benefit of the increased saleability, and only challenged its validity when default on the purchase agreement was imminent. [Williams Lake Lands, Inc. v. LeMoyne Dev., Inc., 108 Idaho 826, 702 P.2d 864 \(Ct. App. 1985\)](#).



**§ 50-1315. Existing plats validated.** — None of the provisions of sections 50-1301 through 50-1325, Idaho Code, shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in manner of form of acknowledgment or certificate. Provided, however:

(1) When plats have been accepted and recorded for a period of five (5) years and said plats include public streets that were never laid out and constructed to the standards of the appropriate public highway agency, said public street may be classified as public right of way; and (2) Public rights of way for vehicular traffic included in plats which would not conform to current highway standards of the appropriate public highway agency regarding alignments and access locations which, if developed, would result in an unsafe traffic condition, shall be modified or reconfigured in order to meet current standards before access permits to the public right of way are issued.

**History.**

1967, ch. 429, § 233, p. 1249; am. 1992, ch. 262, § 5, p. 778; am. 1993, ch. 412, § 9, p. 1505.

**CASE NOTES**

**Merger.**

**Statutory scheme governing dedication.**

**Merger.**

Where the federal survey system did not constitute a legal subdivision of property, the trial judge did not err in finding that three separate parcels had merged into a single parcel of land, that the presence of two roads on the property did not render the property non-contiguous, and that plaintiff's property constituted an unplatted, contiguous tract of land that was subject

to defendant county's subdivision ordinance. *Robbins v. County of Blaine*, 134 Idaho 113, 996 P.2d 813 (2000).

### **Statutory Scheme Governing Dedication.**

The statutory scheme governing the dedication of real property to the public involves two steps, the first of which is an offer by the owner to "dedicate" the property to the public, and the second of which is an acceptance of such offer by the public; the offer to dedicate is evidenced by the acknowledgement and recording of a plat under § 50-1312, and the acceptance by action of a public body "accepting" and "confirming" the "dedication," as required by § 50-1313. *Worley Hwy. Dist. v. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219, 775 P.2d 111 (1989).

**Cited** *Williams Lake Lands, Inc. v. LeMoyné Dev., Inc.*, 108 Idaho 826, 702 P.2d 864 (Ct. App. 1985).

### Decisions Under Prior Law

#### **Validation of Dedication by Validation of Plat.**

A statute validating existing plats and a statute providing that an acknowledgment and recording of plats was equivalent to a deed in fee simple of such portion of premises platted as were set apart for streets or other public use impresses upon the plat theretofore filed a dedication to the public of streets outlined in such plat with the same effect as though dedication had been originally placed upon such plat. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

**§ 50-1316. Penalty for selling unplatted lots.** — Any person who shall dispose of or offer for sale any lots in any city or county until the plat thereof has been duly acknowledged and recorded, as provided in sections 50-1301 through 50-1325[, Idaho Code], shall forfeit and pay one hundred dollars (\$100) for each lot and part of a lot sold or disposed of or offered for sale.

**History.**

1967, ch. 429, § 234, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Contracts Not Invalidated.**

The legislature did not intend for this section to invalidate contracts for the sale of realty because of the vendor's failure to record the plat to lots or portions thereof sold or offered for sale; the language of the section does not prohibit the act of selling lots of an unrecorded plat nor does it mandate that the vendor must record the plat prior to contracting for the sale of the realty, but rather only mandates the forfeiture of a set sum if the vendor contracts for the sale of the realty without first acknowledging and recording the plat. *Cox v. Mountain Vistas, Inc.*, 102 Idaho 714, 639 P.2d 12 (1981).

An agreement to develop property was not void merely because the final plat of the property was not recorded at the time the agreement was executed. This section does not prohibit the sale of lots of an unrecorded plat, nor does this section mandate that the vendor must record the plat prior to contracting for development of the property. *Gugino v. Kastera, LLC (In re Ricks)*, 433 B.R. 806 (Bankr. D. Idaho 2010).

**§ 50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing.** — Whenever any person, persons, firm, association or corporation interested in any city which if incorporated is not exercising its corporate functions may desire to vacate any lot, tract, private road, common, plot or any part thereof in any such city, it shall be lawful to petition the board of county commissioners of the county where such property is located, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated and the names of the persons to be particularly affected thereby; which petition shall be filed with the appropriate county or highway district clerk and notice of the pendency of said petition shall be given for a period of thirty (30) days by written notice thereof, containing a description of the property to be vacated, posted in three (3) public or conspicuous places in said city, and also within the limits of said platted acreage, or in the event such property is located within a county in which there is published a newspaper, as defined by law, such notice shall also be published in such newspaper, once a week for two (2) successive weeks. Provided however, when a public street or public right-of-way is located within the boundary of a highway district or is under the jurisdiction of a county, the respective commissioners of the highway district or board of county commissioners shall assume the authority to vacate said public street or public right-of-way pursuant to section 40-203, Idaho Code. Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

**History.**

1967, ch. 429, § 235, p. 1249; am. 1992, ch. 262, § 6, p. 778; am. 1997, ch. 190, § 10, p. 517; am. 1998, ch. 220, § 4, p. 753; am. 2014, ch. 137, § 3, p. 372.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 137, near the beginning of the section, deleted “if unincorporated, or which” preceding “if incorporated”, “or interested in any platted and subdivided tract or acreage outside the limits of any incorporated city” preceding “may desire to vacate”, and “public street, public right-of-way” preceding “private road”; and rewrote the next-to-last sentence, which formerly read: “Provided, however, when a public street or public right-of-way is located within the boundary of a highway district, the commissioners of the highway district shall assume the authority to vacate said public street or public right-of-way”.

## CASE NOTES

**Cited** *Boise City ex rel. Amyx v. Fails*, 94 Idaho 840, 499 P.2d 326 (1972).

### Decisions Under Prior Law Method Exclusive.

Design and object of those who plat tracts of land was that streets and alleys so platted were intended to give increased value to adjacent lots, and dedication of such streets and alleys to public use cannot be withdrawn at whim or caprice of person who dedicates them, or his grantees. *Boise City v. Hon*, 14 Idaho 272, 94 P. 167 (1908).

When dedication of street was made by filing plat in proper office and selling lots with reference to it, only way title to said land can revert was by having same vacated in manner provided by law. *Hanson v. Proffer*, 23 Idaho 705, 132 P. 573 (1913).

**§ 50-1318. In absence of opposition — Grant of petition — Restrictions.** — If no opposition be made to such petition or application within the said thirty (30) day period, the board of county commissioners shall vacate the same, with such restrictions as they may deem reasonable and for the public good.

**History.**

1967, ch. 429, § 236, p. 1249.

**§ 50-1319. In presence of opposition — Continuance of application — Hearing — When petition granted.** — If opposition be made thereto, such application shall be heard by the appropriate board of county commissioners or highway district commissioners at a time fixed by said board, at which time, if the objector shall consent to said vacation, or if the petitioner shall produce to the board of county commissioners the petition of two-thirds (2/3) of the property holders of lawful age in said town, or owning two-thirds (2/3) of the tracts in such platted and subdivided acreage, the said board of county commissioners may proceed to hear and determine upon said application, and may if in their opinion justice requires it, grant the prayer of the petitioner, in whole or in part.

**History.**

1967, ch. 429, § 237, p. 1249; am. 1992, ch. 262, § 7, p. 778.

**§ 50-1320. Vesting of title on vacation.** — The part so vacated, if it be a lot or tract, shall vest in the rightful owner, who may have the title thereof according to law; or if a public square or common, the property may vest in the proper county, or if in a city, the property shall vest in the council for the use of such city, and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be; or if the same be a street, all right and title thereto shall be distributed in accordance with section 50-311[, Idaho Code].

**History.**

1967, ch. 429, § 238, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.



**§ 50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limitation on rule — Prerequisites to order of vacation.** — No vacation of a public street, public right-of-way or any part thereof having been duly accepted and recorded as part of a plat or subdivided tract shall take place unless the consent of the adjoining owners be obtained in writing and delivered to the public highway agency having jurisdiction over said public street or public right-of-way. Such public street or public right-of-way may, nevertheless, be vacated without such consent of the owners of the property abutting upon such public street or public right of way when such public street or public right-of-way has not been opened or used by the public for a period of five (5) years and when such nonconsenting owner or owners have access to the property from some other public street, public right-of-way or private road. However, before such order of vacation can be entered, it must appear to the satisfaction of the public highway agency that the owner or owners of the property abutting said public street or public right-of-way have been served with notice of the proposed abandonment in the same manner and for the same time as is now or may hereafter be provided for the service of the summons in an action at law. Any vacation of lands within one (1) mile of a city shall require written notification to the city by regular mail at least thirty (30) days prior to the vacation.

**History.**

1967, ch. 429, § 239, p. 1249; am. 1992, ch. 262, § 8, p. 778; am. 2014, ch. 21, § 2, p. 27; am. 2015, ch. 244, § 31, p. 1008.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 21, rewrote the last sentence, which formerly read: “Any vacation of lands within one (1) mile of a city shall require notification and consent of the city”.

The 2015 amendment, by ch. 244, substituted “right-of-way” for “right of way” throughout the section.

**§ 50-1322. Appeal from order granting or denying application to vacate.** — Whenever the governing body shall grant the application, or refuse the application of any person or persons, made as provided for the vacation of any lot, tract, street, common, plat or any part thereof, an appeal may be taken from any act, order or proceeding of the board made or had pursuant to by any person aggrieved thereby within twenty (20) days after the first publication or posting of the statement as required by section 31-819, Idaho Code. Procedure upon such appeal shall be in all respects the same as prescribed in sections 31-1510, 31-1511 and 31-1515, Idaho Code.

**History.**

1967, ch. 429, § 240, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The versions of sections 31-1510 and 31-1511, referred to near the end of this section, were repealed by S.L. 1993, ch. 103, § 1, effective July 1, 1993. Section 31-1515, referred to at the end of the section, was repealed by S.L. 1995, ch. 61, § 5, effective January 1, 1995.

**§ 50-1323. Limitation of actions to establish adverse rights or question validity of vacation.** — Every action brought to establish adverse rights or interests in the affected property or to determine the invalidity of any action by which any lot, tract, street, common, plat or any part thereof has been vacated must be brought within six (6) months after the effective date of this act or within six (6) months after a certified copy of the ordinance, resolution or order of vacation has been filed for record in the office of the county recorder of the county in which the affected property is located. Any person, firm or corporation having any objection thereto may bring such action.

**History.**

1967, ch. 429, § 241, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this act” near the middle of the section refers to the effective date of S.L. 1967, Chapter 429, which was effective April 12, 1967.

**§ 50-1324. Recording vacations.** — (1) Before a vacation of a plat can be recorded, the county treasurer must certify that all taxes due are paid and such certification is recorded as part of the records of the vacation. The treasurer shall withhold the certification only when property taxes are due, but not paid.

(2) Upon payment of the appropriate fee therefor, the county recorder of each county shall index and record, in the same manner as other instruments affecting the title to real property, a certified copy of each ordinance, resolution or order by which any lot, tract, public street, public right of way, private road, easement, common, plat or any part thereof has been vacated. Such certification shall be by the officer having custody of the original document and shall certify that the copy is a full, true and correct copy of the original.

**History.**

1967, ch. 429, § 242, p. 1249; am. 1992, ch. 262, § 9, p. 778; am. 1994, ch. 79, § 1, p. 181.

**§ 50-1325. Easements — Vacation of.** — Easements shall be vacated in the same manner as streets.

**History.**

1967, ch. 429, § 243, p. 1249.

**§ 50-1326. All plats to bear a sanitary restriction — Submission of plans and specifications of water and sewage systems to state department of environmental quality — Removal or reimposition of sanitary restriction.** — For the purposes of sections 50-1326 through 50-1329, Idaho Code, any plat of a subdivision filed in accordance with chapter 13, title 50, Idaho Code, or in accordance with county ordinances adopted pursuant to chapter 38, title 31, Idaho Code, shall be subject to the sanitary restriction. There shall be placed upon the face of every plat prior to it being recorded by the county clerk and recorder, the sanitary restriction, except such sanitary restriction may be omitted from the plat, or if it appears on the plat, may be indorsed by the county clerk and recorder as sanitary restriction satisfied, when there is recorded at the time of the filing of the plat, or at any time subsequent thereto, a duly acknowledged certificate of approval issued by the director of the department of environmental quality, for either public water and/or public sewer facilities, or individual water and/or sewage facilities for the particular land. The owner shall have the obligation of submitting to the director all information necessary concerning the proposed facilities referred to. Such certificate of approval may be issued for the subdivision or any portion thereof. Until the sanitary restrictions have been satisfied by the filing of said certificate of approval, no owner shall construct any building or shelter on said premises which necessitates the supplying of water or sewage facilities for persons using such premises. The sanitary restrictions shall be reimposed on the plat upon the issuance of a certificate of disapproval after notice to the responsible party and an opportunity to appeal, if construction is not in compliance with approved plans and specifications, or the facilities do not substantially comply with regulatory standards in effect at the time of facility construction.

### **History.**

I.C., § 50-1326, as added by 1971, ch. 329, § 2, p. 1294; am. 1989, ch. 233, § 1, p. 569; am. 2001, ch. 103, § 90, p. 253.

### **STATUTORY NOTES**

### **Cross References.**

Powers and duties of director of department of environmental quality, § 39-105.

## **CASE NOTES**

### **Sufficiency of Evidence.**

Approval of subdivision plats by the department of health and the board of county commissioners combined with testimony before the district court as to the care taken in the planning of the subdivision provided the evidence necessary to a finding approving the subdivision plats, notwithstanding failure of the commissioners to obtain a geological survey to determine the potential for pollution of ground water by the proposed sewer systems. *Brown v. Schafer*, 96 Idaho 599, 532 P.2d 941 (1975).

**Cited** *Stephens v. City of Notus*, 101 Idaho 101, 609 P.2d 168 (1980).

**§ 50-1327. Filing or recording of noncomplying map or plat prohibited.** — No person shall offer for recording, or cause to be recorded, a plat not containing a sanitary restriction, unless there is submitted for record at the same time the certificate of approval from the director of the department of environmental quality as required in section 50-1326, Idaho Code. The filing and recording of a noncomplying plat shall in no way invalidate a title conveyed thereunder.

**History.**

I.C., § 50-1327, as added by 1971, ch. 329, § 3, p. 1294; am. 1989, ch. 102, § 3, p. 235; am. 1989, ch. 233, § 2, p. 569; am. 2001, ch. 103, § 91, p. 253.

**STATUTORY NOTES**

**Cross References.**

Powers and duties of director of department of environmental quality, § 39-105.

**Amendments.**

This section was amended by two 1989 acts which appear to be compatible and have been compiled together.

The 1989 amendment, by ch. 102, substituted “50-1326” for “15-1326” in the first sentence.

The 1989 amendment, by ch. 233, in the first sentence added “approval from” following “the certificate of” and substituted “director of the department of health and welfare” for “state board of health” preceding “as required in section 50-1326.”



**§ 50-1328. Rules for the administration and enforcement of sanitary restriction.** — The state board of environmental quality may adopt rules pursuant to section 39-107(8)[(7)], Idaho Code, including adoption of sanitary standards necessary for administration and enforcement, pursuant to section 39-108, Idaho Code, of sections 50-1326 through 50-1329, Idaho Code. The rules and standards shall provide the basis for approving subdivision plats for various types of water and sewage facilities, both public and individual, and may be related to size of lots, contour of land, porosity of soil, ground water level, pollution of water, type of construction of water and sewage facilities, and other factors for the protection of the public health or the environment.

**History.**

I.C., § 50-1328, as added by 1971, ch. 329, § 4, p. 1294; am. 1989, ch. 233, § 3, p. 569; am. 2001, ch. 103, § 92, p. 253.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler, as following the amendment of § 39-107 by S.L. 2000, chapter 182, the reference in the first sentence in this section should be to § 39-107(7), Idaho Code.

**§ 50-1329. Violation a misdemeanor.** — Any person, firm or corporation who constructs, or causes to be constructed, a building or shelter prior to the satisfaction of the sanitary restriction, or who installs or causes to be installed water and sewer facilities thereon prior to the issuance of a certificate of approval by the director of the department of environmental quality, shall be guilty of a misdemeanor. Each and every day that such activities are carried on in violation of this section shall constitute a separate and distinct offense.

**History.**

I.C., § 50-1329, as added by 1971, ch. 329, § 5, p. 1294; am. 1989, ch. 233, § 4, p. 569; am. 2001, ch. 103, § 93, p. 253.

**STATUTORY NOTES**

**Cross References.**

Powers and duties of director of department of environmental quality, § 39-105.

Punishment for misdemeanor where not provided, § 18-113.

**Effective Dates.**

Section 6 of S.L. 1971, ch. 329, provided that the act should be in full force and effect on and after July 1, 1971.

**§ 50-1330. Jurisdiction of public streets and public rights of way within a highway district.** — In a county with highway districts, the highway district board of commissioners in such district shall have exclusive general supervisory authority over all public streets and public rights of way under their jurisdiction within their district, excluding public streets and public rights of way located inside of an incorporated city that has a functioning street department, with full power to establish design standards, establish use standards and regulations in accordance with the provisions of title 49, Idaho Code, accept, create, open, widen, extend, relocate, realign, control access to or vacate said public streets and public rights of way. Provided, however, when said public street or public right of way lies within one (1) mile of a city, or the established county/city impact area or adjacent to a platted area within one (1) mile of a city or the established county/city impact area, consent of the city council of the affected city shall be necessary prior to the granting of acceptance or vacation of said public street or public right of way by the highway district board of commissioners.

**History.**

I.C., § 50-1330, as added by 1983, ch. 233, § 1, p. 636; am. 1992, ch. 262, § 10, p. 778.

**CASE NOTES**

Functioning street department.

Legislative intent.

Power to vacate streets.

**Functioning Street Department.**

Where the district court specifically found the city did not have a functioning street department, the highway district had exclusive general supervisory authority to maintain the streets within the highway district. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

If a city does not follow the procedures set forth for altering a highway district, it does not obtain jurisdiction over streets located inside of the district; therefore, a district court erred by granting a city's motion for partial summary judgment in a case where the city sought to obtain jurisdiction over streets in a highway district by merely establishing a functioning street department. *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003).

### **Legislative Intent.**

Since this section was added to the Idaho Code in 1983, and § 40-1323 was added in 1985, the legislature must have intended to preserve the incorporated city's ability to levy taxes and intended to preserve the city's ability to maintain streets within its city limits and to allow a city to exercise this authority only if it has a functioning street department. To interpret it otherwise would effectively make the provisions of this section regarding incorporated cities with functioning street departments a nullity. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

### **Power to Vacate Streets.**

Under this section, a highway district had exclusive power to vacate streets within its boundaries where the city did not have a functioning street department. *City of Sandpoint v. Sandpoint Indep. Hwy. Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994).

**Cited** *Schneider v. Howe*, 142 Idaho 767, 133 P.3d 1232 (2006).

**§ 50-1331. Setting of interior monuments for a subdivision. —** Interior monuments for a subdivision need not be set prior to the recording of the plat of the subdivision if the land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in subsection (1) of section 50-1333, Idaho Code, and if the person subdividing the land furnishes to the governing body of the county or city which approved the subdivision, a bond or cash deposit guaranteeing the payment of the cost of setting the interior monuments for the subdivision, as provided in section 50-1332, Idaho Code.

**History.**

I.C., § 50-1331, as added by 1987, ch. 227, § 1, p. 482.

**§ 50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work.** — (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the professional land surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the professional land surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the professional land surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the inability, refusal or failure of such professional land surveyor to set the interior monuments for a subdivision, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in [section 50-1333, Idaho Code](#). Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section. In the event the professional land surveyor signing the plat performed his services pursuant to a contract between the person subdividing the land and a business entity possessing a certificate of authorization, as required in this chapter, and the professional land surveyor is unable, refuses or fails to set the interior monuments for a subdivision, a substitute professional land surveyor employed by the same

business entity may assume responsible charge for the remainder of the project and set the monuments, as provided in this chapter, and the governing body shall not direct the county surveyor or contract with a professional land surveyor in private practice to set such monuments.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference point and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference point in relation to the platted location of the corner. In the event the professional land surveyor signing the plat does not set the interior monuments for a subdivision, the substitute professional land surveyor shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show which monuments were set by which professional land surveyor.

### **History.**

**I.C., § 50-1332**, as added by 1987, ch. 227, § 1, p. 482; am. 1997, ch. 190, § 11, p. 517; am. 1998, ch. 220, § 5, p. 753; am. 2011, ch. 136, § 9, p. 383; am. 2012, ch. 25, § 1, p. 82.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 136, twice substituted “reference point” for “reference monument” in subsection (4).

The 2012 amendment, by ch. 25, inserted “professional land” in the last sentence of subsection (1) and twice in subsection (2); in subsection (3), substituted “inability, refusal or failure” for “death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure”, substituted “the interior monuments for a subdivision” for “such monuments”, and added the last sentence; and added the last sentence in subsection (4).

**§ 50-1333. Recording of plats with only exterior monuments referenced.** — (1) If the person subdividing any land has complied with subsection (1) of section 50-1332, Idaho Code, the professional land surveyor may prepare the plat of the subdivision for recording with only the exterior monuments set thereon when submitted for recording. There shall be a certification on the plat by the professional land surveyor that the interior monuments for the subdivision will be set in accordance with section 50-1303, Idaho Code, on or before a specified date and the said interior monuments will be referenced on the plat with a unique symbol. The time for setting the interior monuments shall not exceed one (1) calendar year from the date the plat is recorded or as determined by the governing body of such city or county.

(2) After the interior monuments for a subdivision have been set as provided in the certification required on the plat in subsection (1) of this section, the professional land surveyor performing such work shall, within five (5) days after completion of such work, give written notice to the person subdividing the land involved, the surveyor or engineer of the city or county by which the subdivision was approved and the governing body of such city or county.

(3) In the event that the person subdividing the land involved fails or refuses to authorize the payment for interior monumentation, the professional land surveyor may request payment from the governing body, and upon inspection by the governing body of the interior monumentation, the governing body shall pay the professional land surveyor from moneys held.

**History.**

**I.C., § 50-1333**, as added by 1987, ch. 227, § 1, p. 482; am. 1997, ch. 190, § 12, p. 517.



**§ 50-1334. Review of water systems encompassed by plats. —** Whenever any plat is subject to the terms and requirements of sections 50-1326 through 50-1329, Idaho Code, no person shall offer for recording, or cause to be recorded, a plat unless he or she shall have certified that at least one (1) of the following is the case:

(1) The individual lots described in the plat will not be served by any water system common to one (1) or more of the lots, but will be served by individual wells.

(2) All of the lots in the plat will be eligible to receive water service from an existing water system, be the water system municipal, a water district, a public utility subject to the regulation of the Idaho public utilities commission, or a mutual or nonprofit water company, and the existing water distribution system has agreed in writing to serve all of the lots in the subdivision.

(3) If a new water system will come into being to serve the subdivision, that it has or will have sufficient contributed capital to allow the water system's wells, springboxes, reservoirs and mains to be constructed to provide service without further connection charges or fees to the landowners of the lots, except for connection of laterals, meters or other plant exclusively for the lot owner's own use.

Failure to comply with this section is a misdemeanor subject to the provisions of [section 50-1329, Idaho Code](#). The certification must be filed or recorded as part of the plat document preserved for public inspection. Property owners in the area encompassed by the plat will be entitled to the benefits of the third provision of this section when that option is chosen.

### **History.**

[I.C., § 50-1334](#), as added by 1990, ch. 178, § 1, p. 377.

## **STATUTORY NOTES**

### **Cross References.**

Public utilities commission, § 61-201 et seq.

Punishment for misdemeanor where not provided, § 18-113.



## Chapter 14

### CONVEYANCE OF PROPERTY

Sec.

50-1401. Real property owned by cities — Method of conveyance or exchange.

50-1402. Declaration of value of property.

50-1403. Disposition after hearing.

50-1404. Terms of sale.

50-1405. Conveyance — Disposition of proceeds.

50-1406. Disposal of land acquired by foreclosure — Excess proceeds.

50-1407. Leases.

50-1408. Disposal of land acquired by foreclosure — Excess proceeds.

50-1409. Leases.

**§ 50-1401. Real property owned by cities — Method of conveyance or exchange.** — It is the intent of this chapter that cities of the state of Idaho shall have general authority to manage real property owned by the city in ways which the judgment of the city council of each city deems to be in the public interest. The city council shall have the power to sell, exchange or convey, by good and sufficient deed or other appropriate instrument in writing, any real property owned by the city which is underutilized or which is not used for public purposes.

**History.**

1967, ch. 429, § 244, p. 1249; am. 2001, ch. 331, § 1, p. 1161.

**STATUTORY NOTES**

**Cross References.**

Oil and gas leases, § 47-1401 et seq.

Transfer of property to other units of government, §§ 67-2322 to 67-2325.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

Decisions Under Prior Law [Construction.](#)

[Estoppel.](#)

[Construction.](#)

Statutory regulations providing for transfer of title to land held by city for building purposes did not prohibit a transfer, but only set forth method and manner necessary for a conveyance. *Lloyd Crystal Post No. 20 v. Jefferson County*, 72 Idaho 158, 237 P.2d 348 (1951).

### **Estoppel.**

City was estopped from asserting title to premises conveyed by quitclaim deed to legion post after resolution by city council, even though no ordinance was passed or election held, if legion post spent large sums in maintaining and improving premises. *Lloyd Crystal Post No. 20 v. Jefferson County*, 72 Idaho 158, 237 P.2d 348 (1951).

Estoppel did not apply to municipality if conveyance of title was prohibited, but it did apply, if municipality was allowed to convey title, even though certain statutory requirements for passing title were not met. *Lloyd Crystal Post No. 20 v. Jefferson County*, 72 Idaho 158, 237 P.2d 348 (1951).

**§ 50-1402. Declaration of value of property.** — Whenever the city council proposes to convey, exchange or offer for sale any real property, it shall first declare the value or minimum price, if any, it intends to receive as a result of such conveyance or exchange. The city council may contract for or provide that the property be appraised under such terms and conditions as may be deemed appropriate by the city council. The declaration, either in the form of a minimum dollar value, or an explanation of an intended exchange or conveyance for other than monetary consideration shall be made on the record at a public meeting of the council. The city council may also declare that the subject property will be offered for sale without establishing a minimum price.

Following a declaration of intent to sell or exchange real property, the clerk of the city shall publish a summary of the action taken by the city council in the official newspaper of the city and provide notice of a public hearing before the city council. Notice of the public hearing concerning the proposed exchange or conveyance shall be published in the official newspaper of the city at least fourteen (14) days prior to the date of the hearing.

**History.**

1967, ch. 429, § 245, p. 1249; am. 2001, ch. 331, § 2, p. 1161.

**§ 50-1403. Disposition after hearing.** — After a public hearing has been conducted, the city council may proceed to exchange, convey or offer for sale the real property in question, subject to the restrictions of section 50-1401, Idaho Code. The city council shall be governed by the following provisions:

(1) When the property is offered for sale, the property shall be sold at a public auction to the highest bidder and no bids shall be accepted for less than the minimum declared value previously recorded on the record at a public meeting of the council, provided however, if no bids are received, the city council shall have the authority to sell such property as it deems in the best interest of the city.

(2) When it is determined by the city council to be in the city's best interest that the property be offered for exchange, the council may do all things necessary to exchange any property owned by the city for real property of equal value pursuant to terms which shall be a matter of public record.

(3) When property is purchased, donated or otherwise conveyed to a city and the city has previously used federal funding to acquire the property, with funds specifically designated for the purpose of assisting low-to moderate-income families with decent, safe, affordable housing opportunities, the property may be sold, donated or otherwise conveyed directly to a low-to moderate-income family, so long as the sale or conveyance is consistent with the applicable federal regulations under which the property was obtained initially. In such instances, the city council shall pass an ordinance stating:

- (a) That the property was acquired, in whole, with federal funds;
- (b) That the property is to be sold or otherwise conveyed to a low-to moderate-income family;
- (c) That the sale or conveyance is consistent with all applicable federal, state or local statutes, laws, regulations and policies; and
- (d) That the property may be offered for sale, donation or otherwise conveyed immediately upon the passing of the ordinance.



(4) When it is determined by the city council to be in the city's best interest that a transfer or conveyance be made, the city council may, by ordinance duly enacted, authorize the transfer or conveyance of any real property owned by such city to any tax supported governmental unit, with or without consideration.

(5) When it is determined by the city council to be in the city's best interest, the city may transfer property to a trustee for security purposes, or for purposes of accommodating a transaction, or for funding of construction of capital facilities on city owned property.

**History.**

I.C., § 50-1403, as added by 2001, ch. 331, § 4, p. 1161.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1403, which comprised 1967, ch. 429, § 246, p. 1249; am. 1967 (1st E. S.), ch. 10, § 1, p. 36, was repealed by S.L. 2001, ch. 331, § 3.

**CASE NOTES**

**City Streets.**

Under Idaho law, a city has no authority to convey a portion of a city street. In Idaho, city streets from side to side and end to end belong to the public and are held by the municipality in trust for the use of the public. In the absence of a statute expressly permitting it to do so, a city may not make a valid contract permanently alienating a part of a city street or permitting a permanent encroachment and obstruction thereon, limiting the use of the street by the public. *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

**§ 50-1404. Terms of sale.** — Real property may be sold for cash or on contract for a period not exceeding ten (10) years, with a rate of interest on all deferred payments as determined by the city council. The title to all property sold on contract shall be retained in the name of the city until full payment has been made by the purchaser. Any property sold by the city council under the provisions of this section either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held a record title to the property so sold. The city council shall have authority to cancel any contract of sale pursuant to law, and retain all payments paid thereon, if the purchaser shall fail to comply with any of the terms of the contract. The city council may, by agreement with the purchaser, modify or extend any of the terms of any contract of sale, but the total period shall not exceed ten (10) years.

**History.**

I.C., § 50-1404, as added by 2001, ch. 331, § 5, p. 1161.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1404, which comprised 1967, ch. 429, § 247, p. 1249; am. 1973, ch. 60, § 1, p. 101, was repealed by S.L. 2001, ch. 331, § 3.

**§ 50-1405. Conveyance — Disposition of proceeds.** — The proceeds received from the sale or exchange of property shall be utilized in a manner consistent with provisions of law regarding revenues received by the city.

**History.**

I.C., § 50-1405, as added by 2001, ch. 331, § 6, p. 1161.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1405, which comprised 1967, ch. 429, § 248, p. 1249; am. 1971, ch. 53, § 1, p. 125; am. 1973, ch. 76, § 1, p. 121; am. 1991, ch. 152, § 1, p. 361, was repealed by S.L. 2001, ch. 331, § 3.

**§ 50-1406. Disposal of land acquired by foreclosure — Excess proceeds.** — Should real property be acquired as the result of a foreclosure of any improvement lien, or where a deed has been made and executed by the owner to the city in satisfaction of an improvement lien, and thereafter bring more than is assessed against the same, together with costs and expenses, then the proceeds shall be paid to the owner if his address is known, otherwise, to be placed in the improvement fund for the benefit of which the property was impressed with the lien.

**History.**

I.C., § 50-1406, as added by 2001, ch. 331, § 7, p. 1161.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1406, which comprised 1967, ch. 429, § 249, p. 1249, was repealed by S.L. 2001, ch. 331, § 3.

**§ 50-1407. Leases.** — The mayor and council may, by resolution, authorize the lease of any real or personal property not otherwise needed for city purposes, upon such terms as the city council determines may be just and equitable.

**History.**

I.C., § 50-1407, as added by 2001, ch. 331, § 8, p. 1161.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1407, which comprised 1967, ch. 429, § 250, p. 1249, was repealed by S.L. 2001, ch. 331, § 3.

**§ 50-1408. Disposal of land acquired by foreclosure — Excess proceeds.** — Should the property acquired as the result of a foreclosure of any improvement lien, or where a deed has been made and executed by the owner to the city in consideration of such improvement lien, bring more than is assessed against the same together with costs and expenses, then such excess shall be paid to the owner if his address is known, otherwise, to be placed in the improvement fund for the benefit of which such property was impressed with such lien.

**History.**

1967, ch. 429, § 251, p. 1249.

**§ 50-1409. Leases.** — The mayor and council may, by resolution, authorize the lease of any property not needed for city purposes, upon such terms as may be just and equitable. The provisions of sections 50-1401 through 50-1409[, Idaho Code,] shall not apply to the vacation or discontinuance of streets, highways, avenues, alleys or lanes annulled, vacated or discontinued. Provided, that the council of a city, upon a vote of one half (1/2) plus one (1) of the members of the full council, may set apart portions of the public parks, playgrounds or other grounds to be used from time to time for athletic contests, golf links, agricultural exhibits, ball parks, fairs, rodeos, swimming pools and other amusements, and for military units of the state of Idaho or the United States, and may, upon a vote of one half (1/2) plus one (1) of the members of the full council, make and enter into proper contracts with organizations and associations necessary and proper to carry out the purposes of this provision. Provided, that a city shall not be liable for any damage by reason of any accident occurring on the parks and lands set apart for such purposes, except for gross negligence on the part of the city or its officers or agents, and provided further, that an entrance or other fee may be charged sufficient to pay the expense of maintaining and operating the ground.

**History.**

1967, ch. 429, § 252, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the second sentence was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

Passage of resolution.

Power discretionary.

Property not needed for city purposes.

### **Passage of Resolution.**

The clerk of the city council testified that a motion authorizing the lease of former hospital to state for use as correctional facility was presented at the December 20, 1989, meeting of the city council and that the city council took a final vote at that time. The trial court concluded that the oral motion made and passed by the city council amounted, in substance, to a “resolution” within the meaning of § 50-902 prior to execution of the lease. The trial court did not abuse its discretion in admitting the copy of the resolution into evidence. *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992).

### **Power Discretionary.**

This section permits a municipality to lease city property “not needed for city purposes, upon such terms as may be just and equitable”; this power to lease is a purely discretionary function entrusted to the elected officials of the municipality and, absent a clear abuse of that discretion, any decision made thereunder will not be overturned on appeal. *Bopp v. City of Sandpoint*, 110 Idaho 488, 716 P.2d 1260 (1986).

### **Property Not Needed for City Purposes.**

Lease between telephone and telegraph company and the city of property being used for city hall and police station to telephone company was valid, and this section which authorizes “the lease of any property not needed for city purposes” does not prohibit a city council by resolution from determining that the leased property was not needed for city purposes in the present or future and was subject to city’s right of occupation during transitional period prior to obtaining new premises. *Mountain States Tel. & Tel. Co. v. City of Boise*, 95 Idaho 264, 506 P.2d 832 (1973).



Idaho Code Ch. 15

• [Title 50](#)», «[Ch. 15](#)»

## Chapter 15

### POLICEMAN'S RETIREMENT FUND

Sec.

50-1501. Purpose stated.

50-1502. Definitions.

50-1503. Establishment of retirement fund.

50-1504. Board of police retirement fund commissioners — Election — Term of office — Duties.

50-1505. Policeman's retirement fund.

50-1506. Appropriation of fund.

50-1507. Administration of fund.

50-1508. Actions by and against board.

50-1509. Employees of board.

50-1510. Personal liability of board members or their employees.

50-1511. Audit of claims.

50-1512. Tax levy — Salary deductions.

50-1513. Chairman of board — Secretaries — Reports.

50-1514. Retirement of policemen — Retirement benefits — Leave of absence.

50-1515. Resignation of policemen — Refund of deductions.

50-1516. Retirement for disability — Death benefits — Funeral benefits.

50-1517. Benefits exempt from legal process.

50-1518. Construction of statute.

50-1519. Rotary expense fund.

50-1520. Insurance of risks.

50-1521. Application of statute.

50-1522. Separability.

50-1523. False claims — Penalty.

50-1524. Authority to create policeman's retirement fund terminated.

50-1525. Mandatory actuarial study.

50-1526. Making a false claim — Misdemeanor.

**§ 50-1501. Purpose stated.** — Retirement, with continuance of pay for themselves, provision for dependents and pay during temporary disability, and the encouragement of long tenure in police service of paid policemen becoming aged or disabled in the service of the state or any of its cities, is hereby declared to be a public purpose of joint concern to the state and each of its cities in the protection of lives and conservation of property and essential to the maintenance of competent and efficient personnel in police service.

**History.**

1967, ch. 429, § 253, p. 1249.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

**Cited** *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

**§ 50-1502. Definitions.** — The following are definitions of terms used in sections 50-1501 through 50-1524, Idaho Code:

(a) “Paid policeman” means any individual who is on the payroll of any city in the state of Idaho and who devotes his or her principal time of employment to the care, operation or maintenance of a regularly constituted police department of such city;

(b) “Industrial accident board” means the board as authorized and created under the provisions of chapter 5, title 72, Idaho Code, or as the same may be hereafter amended;

(c) “Workers’ Compensation Law” means the Workers’ Compensation Law as authorized and created under title 72, Idaho Code, or as the same may hereafter be amended;

(d) “Twenty-five years active service” — an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city in a regularly constituted police department, and has actually been carried on the payroll for twenty-five (25) years;

(e) “Five years continuous service, ten years continuous service, fifteen years continuous service” — an individual who has been employed by a regularly constituted police department for a period of five (5) years, ten (10) years, or fifteen (15) years continuously, without having engaged in any other gainful occupation;

(f) “Leave of absence” means a period of time which a paid policeman shall have been out of the service of said police department of the city of which he was a member, and who, for that like period of time was off the payrolls thereof;

(g) “Mandatory retirement at age sixty-five” — retirement to become mandatory when age of sixty-five (65) years has been reached;

(h) The meaning of the term “incapacitated in a degree which prohibits efficient service” means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid policeman during any occasion when his said services as a policeman shall be necessary;

(i) “Twenty-five years of accumulated service” — an individual who has been employed by a regularly constituted police department without having engaged in any other gainful occupation and has had twenty-five (25) years of accumulated service with the same police department and has been carried on the payrolls of such department for that period of accumulated time.

### **History.**

1967, ch. 429, § 254, p. 1249; am. 1993, ch. 350, § 1, p. 1295.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

Section 1 of S.L. 1969, ch. 250 amended this section to read as follows: “The following are definitions of terms used in sections 50-1501 through 50-1524:

“(a) ‘Paid policeman’ means any individual who is on the payroll of any city in the state of Idaho and who devotes his or her principal time of employment to the care, operation or maintenance of a regularly constituted police department of such city;

“(b) ‘Industrial accident board’ means the board as authorized and created under the provisions of chapter 5 of title 72, or as the same may be hereafter amended;

“(c) ‘Workmen’s Compensation Law’ means the Workmen’s Compensation Law as authorized and created under title 72, or as the same may hereafter be amended;

“(d) ‘Twenty years active service’ — an individual whose principal means of livelihood for the period of twenty years has been through employment by a city in a regularly constituted police department, and has actually been carried on the payroll for twenty years;

“(e) ‘Five years continuous service, ten years continuous service, fifteen years continuous service’ — an individual who has been employed by a regularly constituted police department for a period of five years, ten years, or fifteen years continuously, without having engaged in any other gainful occupation;

“(f) ‘Leave of absence’ means a period of time which a paid policeman shall have been out of the service of said police department of the city of which he was a member, and who, for that like period of time was off the payrolls thereof;

“(g) ‘Mandatory retirement at age sixty-five’ — retirement to become mandatory when age of sixty-five years has been reached;

“(h) The meaning of the term ‘incapacitated in a degree which prohibits efficient service’ means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid policeman during any occasion when his said services as a policeman shall be necessary;

“(i) ‘Twenty years of accumulated service’ — an individual who has been employed by a regularly constituted police department without having engaged in any other gainful occupation and has (been) had twenty years of accumulated service with the same police department and has been carried on the payrolls of such department for that period of accumulated time.”

However, chapter 250 is probably invalid. Such chapter, which was Senate Bill 1178, was passed by the senate as set out above. The bill in the house was amended by striking out the amendment to the section in its entirety. The bill was then returned to the senate but was not submitted to the senate for the approval of the amendments. The bill, without such amendments, was then enrolled and sent to the governor for signature.

Pursuant to § 72-502, references to the “industrial accident board” and “board” are deemed to be references to the “industrial commission.”

**§ 50-1503. Establishment of retirement fund.** — The city council of any city in the state of Idaho may, in accordance with sections 50-1501 through 50-1524[, Idaho Code], establish a “policeman’s retirement fund” providing, that when such fund shall have been established, as hereinafter provided, it shall continue to function except that the legislature of the state of Idaho may abolish it.

**History.**

1967, ch. 429, § 255, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.



**§ 50-1504. Board of police retirement fund commissioners — Election — Term of office — Duties.** — The city council of any city, having elected to establish a policeman's retirement fund, together with three (3) members of the police department, shall constitute the board of police retirement fund commissioners. Each police department member, to be eligible for board membership, must be (a) a participating member of the fund; and (b) either on active duty or retired from the department and drawing benefits from the fund. For the purposes of this section "participating member" means any active member of the police department who contributes to the fund, or any retired member of the police department who receives benefits from the fund. The three (3) members from the police department shall be elected at an election held every two (2) years after the adoption of the provisions of sections 50-1501 through 50-1524, Idaho Code, and in the manner herein provided. In the event that the number of participating members eligible for board membership is limited to two (2) or fewer, a member may hold more than one (1) position on the board simultaneously.

Not more than thirty (30) nor less than fifteen (15) days preceding the date fixed by law for general city elections, written notice of the nomination of any participating member of said police department for membership on said board may be filed with the secretary thereof. Each petition of nomination shall be signed by not less than three (3) participating members of said police department, and nothing herein contained shall prevent any participating member of a police department from signing more than three (3) petitions of nomination. Said election shall be held on a date fixed by the secretary of the board, and shall not be less than five (5) days nor more than ten (10) days before the date fixed by law for the election as aforesaid. Notices of the dates upon which said petitions may be filed and of the date fixed for the election of members to said board shall be given by the secretary by posting written notices thereof in a prominent place in the police headquarters of said city and by mailing written notices to each participating fund member. For the purpose of said election, the secretary shall prepare and furnish by mail printed or typewritten ballots in the usual form, containing the names of all persons regularly nominated for

membership. Each participating member of said police department shall be entitled to vote in person or by mail for three (3) persons as members of said board. The chief of police of the department shall appoint two (2) members of the department, one (1) of which may be the secretary of the fund, to act as clerks at the election, which shall open at 8 o'clock A.M., and remain open so long thereafter, not exceeding twelve (12) hours, as will afford an opportunity for each person entitled to vote. The three (3) nominees receiving the highest number of votes in ballots cast in person and by mail in said election shall be declared elected and their terms shall commence on the same date as that of the mayor of said city.

Said board shall provide for the disbursement of such retirement fund and shall designate the beneficiaries thereof as provided in [sections 50-1501 through 50-1524, Idaho Code](#).

#### **History.**

1967, ch. 429, § 256, p. 1249; am. 1987, ch. 73, § 1, p. 143.

### **CASE NOTES**

#### **Constitutionality.**

In disbursing the retirement fund to the beneficiaries, as provided in this section, the commissioners are not discharging an unconstitutional liability of the city to a private association, but are disbursing public funds from a public trust for a public purpose, i.e., compensation of faithful public servants for services rendered over the years. [Hanson v. City of Idaho Falls, 92 Idaho 512, 446 P.2d 634 \(1968\)](#).

**§ 50-1505. Policeman's retirement fund.** — There is hereby created a special fund in the treasury of the city to be designated and known as the policeman's retirement fund for the purpose of providing retirement pay and other benefits for paid policemen, as defined herein, becoming aged or disabled while in the public police service of said city and also providing for their dependents. Such fund shall consist of all moneys accruing under the provisions hereof, all appropriations thereto, all contributions to said fund, donations, properties, and securities acquired by investment or otherwise, and interest earned, shall, commencing with the effective date of such fund, become a part thereof.

**History.**

1967, ch. 429, § 257, p. 1249.

**§ 50-1506. Appropriation of fund.** — All moneys coming into the said fund shall be continuously appropriated for the objects, uses and purposes provided herein by sections 50-1501 through 50-1524[, Idaho Code,] and to pay all or any costs and expenses of administration thereof by the said board of police retirement fund commissioners.

**History.**

1967, ch. 429, § 258, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1507. Administration of fund.** — The policeman's retirement fund shall be administered by the chairman of the board of police retirement fund commissioners.

**History.**

1967, ch. 429, § 259, p. 1249.

**§ 50-1508. Actions by and against board.** — The said board of police retirement fund commissioners shall have the power to sue or be sued in all courts of the state in all matters arising out of the administration, management and enforcement of the provisions of sections 50-1501 through 50-1524[, Idaho Code].

**History.**

1967, ch. 429, § 260, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Decisions Under Prior Law Form of Action.**

Where the board denied the application of one under disability retirement for permanent retirement on the ground that, having previously been retired, the enactment of § 50-2116(i) [now § 50-1516(h)] did not affect his rights, his action for declaratory judgment was the proper form of action. **Engen v. James**, 92 Idaho 690, 448 P.2d 977 (1969).

**§ 50-1509. Employees of board.** — The said board of police retirement fund commissioners shall have power to engage assistants, experts, accountants, clerks and other employees which may be found necessary to carry out the provisions of sections 50-1501 through 50-1524[, Idaho Code], the same to be paid out of said retirement fund.

**History.**

1967, ch. 429, § 261, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1510. Personal liability of board members or their employees.**

— The board of police retirement fund commissioners shall not, nor shall any person employed by any commissioners, be personally liable in his private capacity for or on account of any act performed or entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of said retirement fund.

**History.**

1967, ch. 429, § 262, p. 1249.



**§ 50-1511. Audit of claims.** — All claims against said fund shall be examined, audited and allowed in the manner now provided or hereafter provided for by law for claims against any city.

**History.**

1967, ch. 429, § 263, p. 1249.

**§ 50-1512. Tax levy — Salary deductions.** — Any city having established a policeman's retirement fund may levy a tax of not to exceed eight hundredths per cent (.08%) of market value for assessment purposes of property within the corporate limits of the city, except where pursuant to section 50-1525, Idaho Code, it is found that the levy is not sufficient to meet the fund's future liability, in which case the levy may be increased to provide for the actuarial soundness of the fund. Said taxes shall be placed by the city treasurer in a fund to be known as the "policeman's retirement fund." Sums certain, as determined by the governing body, not to exceed eight per cent (8%) per month, may be deducted from the salary of each police officer and placed in said "policeman's retirement fund" by the treasurer. When all claims against the fund have been satisfied, the authority to levy according to this section shall terminate.

#### **History.**

1967, ch. 429, § 264, p. 1249; am. 1971, ch. 26, § 6, p. 68; am. 1985, ch. 223, § 1, p. 536; am. 1996, ch. 208, § 12, p. 658; am. 1996, ch. 322, § 53, p. 1029.

### **STATUTORY NOTES**

#### **Cross References.**

Deductions from wages for pension funds, § 50-1016.

#### **Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendments, by ch. 208, and ch. 322, both deleted the second sentence of this section which read: "The levy, as authorized herein, shall be exempt from the provisions of [section 63-2220, Idaho Code](#)."

#### **Effective Dates.**

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

**§ 50-1513. Chairman of board — Secretaries — Reports.** — The mayor of the city shall be ex-officio chairman of the board of police retirement fund commissioners and the members of the board shall elect the other necessary officers. The secretary of the board shall make a semiannual report to the city council as to the condition of the said “policeman’s retirement fund:” their receipts and disbursements in the accounts of same, a complete list of the beneficiaries of the said fund and a list of the amount paid to each of said persons. The city treasurer shall, from the records of his office, furnish the secretary with any pertinent or necessary information which may be needful or necessary to compile such report or to furnish the board with the proper information: all reports to be written, signed and dated by the secretary.

**History.**

1967, ch. 429, § 265, p. 1249.

**§ 50-1514. Retirement of policemen — Retirement benefits — Leave of absence.** — (a) Whenever any person shall have been duly appointed, selected and sworn in as a member in any capacity or rank whatsoever of a regularly constituted police department of the city which may hereafter be subject to the provisions of this chapter, and shall have reached the age of sixty (60) years, shall be retired upon his written application to the board of retirement fund commissioners, and every other member of such a police department who reaches the age of sixty-five (65), or any member who, after reaching the age of sixty (60) years, continues in a regular capacity with that police department and thereafter becomes physically or mentally incapacitated to a degree which prevents efficient service, shall by the order and direction of the board be retired from further service with that city police department. When any person shall have served not less than twenty-five (25) years accumulatively with the same city police department, he may should he so desire have the right to retire at that time, provided he has not reached the age of sixty-five (65) years, and provided further, that whenever that person eligible to retire upon completion of twenty-five (25) years of accumulated service so elects, he may, upon application to the board of police retirement fund commissioners, remain in active service as long as his physical condition permits, or until reaching the age of sixty-five (65) years. When the board issues an order of retirement, the order shall terminate and end the services of a person in the police department, except in cases of extreme emergency as determined by the board of police retirement fund commissioners in cooperation with the chief of police of that city, and the person to be retired shall thereafter during his lifetime be paid from the retirement fund a yearly sum, equal to one-half (1/2) of the average annual salary received by the person during the five (5) highest salary years of his last ten (10) years of service next preceding the date of retirement; provided, however, in cases where the retirement plan was approved by ordinance prior to April 1, 1947, a yearly retirement sum shall be paid which is equal to one-half (1/2) of the amount of salary attached to the rank which he held in the police department of the city for a period of one (1) year next preceding the date of retirement, both of which retirement sums shall be adjusted in proportion to any cost-of-living adjustments made to the salaries of active employees. Provided further, that where a retirement

plan was approved by ordinance prior to April 1, 1947, upon completion of twenty (20) years of accumulated service a person subject to this chapter may apply to the board of police retirement fund commissioners for a reduced yearly retirement sum equal to the percentage of full benefits arrived at by dividing the number of years served by twenty-five (25). This percentage reduction in benefits shall be consistent throughout the person's retirement period.

(b) The period of time during which any paid policeman who is entitled to retire under the provisions of this chapter, is out of the service with the constituted police department of that city, while on authorized leave of absence, other than leave of absence granted a policeman by reason of injury or illness, and during which period of time the policeman is not carried on the payroll of the police department of the city, shall not be counted as applying to accumulative service under provisions of this chapter, except that this shall not apply to leave of absence granted to any policeman of any city for the purpose of service in the armed forces of the United States. The period of time prior to granting a leave of absence, other than those granted due to injury or illness, or for the purpose of serving in the armed forces of the United States, when the policeman was actually on the payroll of the police department of the city, and period of time the policeman is actually on the payroll of the police department after his return from leave of absence, shall be computed to establish length of accumulated service. Also, providing that any paid policeman coming under the provisions of this chapter, who shall leave the service of the police department and has been repaid any part or all of the moneys paid by him through payroll deductions to the retirement fund, shall, if and when returning to service of that police department, repay the amount of money he was reimbursed, under the provisions of this chapter to the policeman's retirement fund before becoming eligible to receive retirement pay under the provisions of this chapter.

### **History.**

1967, ch. 429, § 266, p. 1249; am. 1970, ch. 157, § 1, p. 481; am. 1974, ch. 103, § 1, p. 1208; am. 1981, ch. 4, § 1, p. 8.

### **STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 1969, ch. 250, also purported to amend this section, but, since it was passed by the House in a different version than was passed by the Senate, it was deemed invalid.

**Effective Dates.**

Section 2 of S.L. 1973, ch. 103 declared an emergency. Approved March 27, 1974.

**CASE NOTES****Decisions Under Prior Law Disability Retirement.**

The requirements for retirement under former similar section did not preclude the eligibility for retirement of those who complied with the requirements of § 50-2116(i) [now § 50-1516(h)]. [Engen v. James, 92 Idaho 690, 448 P.2d 977 \(1969\)](#).

**§ 50-1515. Resignation of policemen — Refund of deductions.** — A policeman who has been employed by a regularly constituted police department for a period of less than five (5) continuous years shall, upon termination of such employment, and upon application to the board of police retirement fund commissioners, be refunded one fourth (1/4) of the moneys deducted from his salary and placed in the police retirement fund. The amount to be refunded upon the application of a policeman who has been employed by said police department for a period of not less than five (5) years continuously shall be one third (1/3) of the moneys deducted from his salary and placed in the police retirement fund; for not less than ten (10) years continuous employment with said police department, one half (1/2) of the moneys deducted from his salary and placed in the police retirement fund shall, upon application, be refunded; and after having completed fifteen (15) years of continuous service with said police department, all moneys deducted from his salary and placed in the police retirement fund shall be refunded upon application of such policeman upon termination.

**History.**

1967, ch. 429, § 267, p. 1249.

**§ 50-1516. Retirement for disability — Death benefits — Funeral benefits.** — No person shall be retired as provided in the above sections unless the member shall comply with the qualifications set out and provided by this chapter:

(a) Any paid police member incapacitated by injury or by illness as a result of the performance of the member's official duties as a paid member of a police department shall be retired so long as the disability shall continue in a degree which prevents efficient service and during the disability shall be paid from the retirement fund a disability benefit as follows:

(1) For disability attributable wholly to service as a paid police member, a monthly sum equal to one twenty-fourth ( $1/24$ ) of the amount of the annual salary attached to the rank which the member held in the police department for a period of one (1) year next preceding the date of retirement; provided, however, that the benefits may be reduced by the board of police retirement fund commissioners commensurate to the extent of the disability and the person's income earning capacity;

(2) For disability attributable only in part to service as a paid police member, a monthly disability benefit in an amount to be fixed by the board of police retirement fund commissioners, but commensurate with the extent of proportion the service-connected disability relates to that person's preexisting injury or infirmity, the board may increase or decrease such monthly benefits whenever the impairment in the person's earning capacity warrants an increase or decrease, but in no event shall a monthly benefit paid to the person exceed the benefit provided under subparagraph (1) above;

(3) Provided, however, that if any paid police member is entitled to receive compensation under the Workmen's [Worker's] Compensation Law of the state of Idaho as it now exists, or shall hereafter be amended, the amount payable under this act shall be reduced by the amount to which the paid police member is entitled under the Workmen's [Worker's] Compensation Law;



(4) The board of police retirement fund commissioners shall require medical examinations of all applicants for retirement by reason of disability, and shall, at their discretion, require periodic medical examinations of persons receiving a disability retirement allowance. The board shall prescribe general rules for medical examination required hereunder, and may provide for the discontinuance of any disability retirement allowance and forfeiture of all rights under this act for any person who refuses to submit to such an examination;

(5) The decision of the board as to eligibility allowances or benefits shall be final;

(6) When a disability beneficiary is determined by the board to be not incapacitated in a degree which prevents efficient service, the member's disability retirement allowance shall be canceled forthwith;

(7) Such a person, who for any reason is not reinstated in the service of the member's department, shall receive separation benefits according to the member's entitlement, as provided under [section 50-1515, Idaho Code](#).

(b) In event a paid police member is killed or sustains injury, from which death results, while in the performance of the member's duty or from causes disconnected with the member's official duties but during the period of the member's service, and leaves surviving the member a spouse or a minor child or minor children, or, in the event the member's spouse has predeceased the member, the member's minor child or children, shall be paid from the retirement fund a yearly sum equal to one-half (1/2) of the amount of the salary attached to the rank the member held in the police department of the city for a period of one (1) year next preceding the date of injury or death. In event a surviving spouse of a police member so killed, or whose death so results, shall thereafter die and there shall be at the time of death, a minor child or minor children of the deceased police member under the age of eighteen (18) years, the payments aforesaid shall be paid, for the sole benefit of the minor child or children under and until reaching the age of eighteen (18) years; provided, however, that any sums payable to any surviving spouse or minor child or children of any police member under this act shall be reduced by any sum to which the surviving spouse or minor

child or children may be entitled under the provisions of the Workmen's [Worker's] Compensation Law of the state of Idaho.

(c) In event a paid police member, retired on retirement pay, shall die and leave surviving the member a surviving spouse, who was the member's spouse for over five (5) years immediately prior to the member's death, but no minor children, the spouse shall receive an amount equal to three-fourths ( $\frac{3}{4}$ ) of the retirement or benefit pay of the member prior to the member's death, adjusted in proportion to any cost-of-living adjustments made to the salaries of active employees, but only during the spouse's lifetime.

(d) In event a paid police member, retired on retirement pay, shall die and leave surviving the member a spouse who was the member's spouse for over five (5) years immediately prior to the member's death or a minor child or minor children, the surviving spouse, or, in the event the member's spouse has predeceased the member, the member's minor child or children, shall be paid the retirement pay to which the deceased police member was eligible, and if the member's surviving spouse thereafter dies the full retirement pay shall be paid to the child or children until they reach the age of eighteen (18) years.

(e) In the event any paid police member shall die within three (3) months, from and as a result of injuries received in performance of duty or from causes disconnected with the member's official duties but during the period of the member's service and shall at the time of the member's death be unmarried but shall leave surviving the member a dependent father or mother, the retirement or benefit pay to which the member would have been entitled thereunder shall be paid fifty per cent (50%) to each of the surviving parents during the continuance of his or her natural life.

(f) In addition to the foregoing, at the death of any paid police member from whatever cause, the fund shall pay the sum of one hundred dollars (\$100) as funeral expenses.

(g) Any police member, father, mother, surviving spouse, child or children of a police member entitled to compensation under the Workmen's [Worker's] Compensation Law shall draw benefits under provisions of this chapter only to the extent that the benefits under this chapter exceed those to which the member shall be entitled under the Workmen's [Worker's] Compensation Law of the state of Idaho.

(h) When a police member has been disabled and when the period of the member's disability combined with the member's prior service as a police member makes the member eligible for retirement under the provisions of this chapter, the member may upon application to the board be retired at one-half (1/2) the rate of pay applicable for the job classification at the time of disability, or its equivalent, which the member held at the time of disability which pay shall be adjusted in proportion to any cost-of-living adjustments made to the pay of active employees.

### **History.**

1967, ch. 429, § 268, p. 1249; am. 1970, ch. 157, § 2, p. 481; am. 1976, ch. 287, § 1, p. 990; am. 1981, ch. 4, § 2, p. 8; am. 1992, ch. 41, § 1, p. 140.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The bracketed insertions in paragraph (a)(3) and subsections (b) and (g) were added by the compiler to correct the name of the referenced law. See § 72-101 et seq.

Section 3 of S.L. 1969, ch. 250 also purported to amend this section, but, since it was passed by the House in a different version than was passed by the Senate, it was deemed invalid.

The term "this act" in paragraphs (a)(3) and (a)(4) and subsection (b) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

## **CASE NOTES**

### **Effect of Repeal on Existing Rights.**

The repeal of former provision allowing retirement at half-pay of disabled policeman did not affect the rights of one who had become entitled to retirement and applied therefor prior to such repeal, as the existing rights of such a one could not be taken away by a later act of the legislature. [Engen v. James, 92 Idaho 690, 448 P.2d 977 \(1969\).](#)

**§ 50-1517. Benefits exempt from legal process.** — No benefits or payments payable under the provisions of sections 50-1501 through 50-1524[, Idaho Code,] shall be subject to execution, nor assignable, nor shall be hypothecated or in any manner encumbered.

**History.**

1967, ch. 429, § 269, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1518. Construction of statute.** — The provisions of this chapter shall be liberally construed, with the object of promotion of justice and the welfare of the persons subject to its provisions.

**History.**

1967, ch. 429, § 270, p. 1249.

**§ 50-1519. Rotary expense fund.** — The provisions of sections 67-2018, 67-2019, 67-2020 and 67-2021, Idaho Code, are hereby expressly declared applicable to the provisions of sections 50-1501 through 50-1524[, Idaho Code].

**History.**

1967, ch. 429, § 271, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1520. Insurance of risks.** — In event the board of police retirement fund commissioners shall determine that there are risks arising under the terms of sections 50-1501 through 50-1524[, Idaho Code,] which may be made the subject of insurance against loss to the fund created herein, said commission is hereby authorized at its discretion, to insure such risks. In event of such insurance, the premiums therefor shall be paid from the fund created hereby as other claims are paid; provided, that such insurance shall not in any event be insurance of any individual but exclusively insurance of the fund itself against loss.

**History.**

1967, ch. 429, § 272, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

**§ 50-1521. Application of statute.** — No paid policeman shall be retired under section 50-1514[, Idaho Code,] prior to January 1, 1950, unless he shall be discharged from service because of his incapacity in a degree which prohibits efficient service as defined in subdivision (h) of section 50-1502[, Idaho Code]. The provisions of sections 50-1501 through 50-1524[, Idaho Code,] shall apply only to persons now employed or hereafter to be employed as paid policemen.

**History.**

1967, ch. 429, § 273, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions were added in three places by the compiler to conform to the statutory citation style.



**§ 50-1522. Separability.** — If any clause, section or provision of sections 50-1501 through 50-1524[, Idaho Code,] be found to be unconstitutional, the remainder of sections 50-1501 through 50-1524[, Idaho Code,] shall remain in full force and effect, notwithstanding such invalidity.

**History.**

1967, ch. 429, § 274, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions were added by the compiler to conform to the statutory citation style.

**§ 50-1523. False claims — Penalty.** — Any person making a false claim for allowance of benefits or payment of money under sections 50-1501 through 50-1524[, Idaho Code], knowing the same to be false, shall be deemed guilty of presentation of a false claim against the state and shall be punished as provided by law.

**History.**

1967, ch. 429, § 275, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Making a false claim, § 50-1526.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1524. Authority to create policeman's retirement fund terminated.** — From and after the effective date of this act, no city shall establish a policeman's retirement fund: provided, however, that any policeman's retirement fund, established under the provisions of sections 50-1501 through 50-1524[, Idaho Code,] and which is now in effect, shall not be invalidated. Provided, further, except as in this section hereinafter otherwise provided, that no person, who shall be hereafter employed as a paid policeman in a city which has a policeman's retirement fund at the effective date of this act, shall participate in the policeman's retirement fund. Any person hereafter employed by a police department shall be eligible to participate in the public employee's retirement system except as in this section hereinafter otherwise provided. Any city having an existing policeman's retirement fund may require, by ordinance, that all of its paid policemen shall participate in its policeman's retirement fund. No paid policeman employed in a city which has elected by ordinance to require all its paid policemen to participate in its policeman's retirement fund shall be eligible to participate in the public employee's retirement system.

**History.**

1967, ch. 429, § 276, p. 1249; am. 1969, ch. 307, § 1, p. 944; am. 1970, ch. 24, § 1, p. 51.

**STATUTORY NOTES**

**Cross References.**

Public employee retirement system, § 59-1301 et seq.

**Compiler's Notes.**

The phrase "the effective date of this act" in the first and second sentences refers to the effective date of S.L. 1967, Chapter 429, which was effective April 12, 1967.

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 2 of S.L. 1969, ch. 307 declared an emergency. Approved March 27, 1969.

Section 2 of S.L. 1970, ch. 24 declared an emergency. Approved February 17, 1970.

**§ 50-1525. Mandatory actuarial study.** — Any city establishing and maintaining a policeman's retirement fund pursuant to the provisions of this chapter shall, at its own expense, conduct an actuarial study for the purpose of determining the actuarial soundness of such fund. Commencing January 1, 1991, actuarial studies required hereunder shall be conducted within four (4) years of the last actuarial study and each four (4) years thereafter. Copies of such studies shall be submitted to the secretary of state for the state of Idaho and to the secretary of the local police retirement fund board.

**History.**

I.C., § 50-1525, as added by 1971, ch. 26, § 7, p. 68; am. 1990, ch. 128, § 1, p. 298.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

Section 8 of S.L. 1971, ch. 26 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act".

**Effective Dates.**

Section 9 of S.L. 1971, ch. 26 provided that the act should be in full force and effect on and after July 1, 1971.

**§ 50-1526. Making a false claim — Misdemeanor.** — Any person making a false claim for allowance of benefits or payment of money under the provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor, and shall be punished pursuant to the provisions of section 18-113, Idaho Code.

**History.**

I.C., § 50-1526, as added by 1993, ch. 349, § 1, p. 1294.

Idaho Code Ch. 16

• [Title 50](#)», «[Ch. 16](#)»

## Chapter 16

### CIVIL SERVICE

Sec.

50-1601. Civil service commission — Appointment — Qualifications — Manner of abolishing commission.

50-1602. Departments governed by civil service — Classified civil service lists.

50-1603. Rules by commission.

50-1604. Examinations — Qualifications of applicants — Rehires — Causes for removal, discharge or suspension of incumbents.

50-1605. Appointment to positions — Certificate of eligibles — Reexamination.

50-1606. Promotion for merit.

50-1607. Employees of six months when ordinance becomes effective.

50-1608. Temporary appointments.

50-1609. Removals — Suspensions — Appeals — Hearings.

50-1610. Removals due to reduction of force.



**§ 50-1601. Civil service commission — Appointment — Qualifications — Manner of abolishing commission.** — To provide a means whereby employees of the cities of the state of Idaho may be selected, retained and promoted on the basis of merit and performance of duties, thus effecting economy and efficiency in the administration of city government, the city council of any city may, by ordinance, provide for the creation of a civil service system under the provisions herein set forth.

(A) To create such system, the mayor with the advice and consent of the council shall appoint three (3) persons from among the qualified electors of the city to be designated the civil service commission.

(B) One member of said civil service commission shall serve a two (2) year term, another member shall serve a four (4) year term, and a third member shall serve a six (6) year term. Each second year thereafter, one (1) member shall in like manner be appointed for a term of six (6) years, to take the place of the member whose term next expires. If a vacancy occurs in the civil service commission, such vacancy for the balance of the unexpired term shall be filled as in the first instance.

Any city having created a civil service system shall not thereafter abolish such system except as herein provided: notice of date, time and place of first reading of the proposed ordinance to abolish such system shall be published in one (1) issue of the official newspaper of the city not less than ten (10) days immediately preceding the first reading of the proposed ordinance; and, such ordinance shall not be passed unless the same is read at length on three (3) different days at least seven (7) days apart.

**History.**

1967, ch. 429, § 277, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Worker's compensation applies, § 72-205.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

**Firefighters.**

The contract the city of Boise made with the Idaho national guard (IDANG) to provide air rescue fire fighting (ARFF) services at the Boise municipal airport did not violate the Idaho constitution or the Idaho civil service act; however, the firefighters were entitled to collectively bargain in anticipation of the city's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and, by refusing to negotiate with the union, the city violated the collective bargaining act. [International Ass'n of Firefighters Local No. 672 v. Boise City, 136 Idaho 162, 30 P.3d 940 \(2001\).](#)

**§ 50-1602. Departments governed by civil service — Classified civil service lists.** — The council of each city creating a civil service system shall, by ordinance, determine which departments therein shall be included within the classified civil service system to be governed by the civil service rules and regulations. No appointments shall be made except under and according to the rules and regulations as adopted by resolution of the council.

The appointing authority of each department, subject to the rules and regulations of the civil service system, shall appoint all officers, employees or agents classified under the civil service rules and regulations, from the classified civil service list furnished by the civil service commission, and in like manner fill all vacancies.

**History.**

1967, ch. 429, § 278, p. 1249; am. 1973, ch. 287, § 1, p. 611.

**§ 50-1603. Rules by commission.** — The civil service commission shall make, and is hereby empowered to make, all necessary rules and regulations to carry out the purposes of the civil service system and for examinations, appointments and promotions. All such rules and regulations shall be printed by the civil service commission for distribution.

**History.**

1967, ch. 429, § 279, p. 1249.

**§ 50-1604. Examinations — Qualifications of applicants — Rehires — Causes for removal, discharge or suspension of incumbents. —** (1) Except as provided in subsection (3) of this section, all applicants for places of employment in the classified civil service shall be subject to examination, which shall be public competitive and free and shall be held at such times and places as the civil service commission shall from time to time determine. Such examinations shall be for the purpose of determining the qualifications of applicants for positions and shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek appointment.

(2) The governing body of each city, having created a civil service commission, shall provide a job description for each civil service position of the city and shall determine and establish the standards and qualifications therefor to be met by each applicant before appointment.

(3) Any applicant who, while in good standing, voluntarily terminated his or her employment with the agency with whom an appointment is sought may, upon written request to and approval from the appointing officer and in accordance with the written policy of the civil service commission, be rehired without taking an examination, provided:

(a) The applicant is otherwise qualified for the position; and

(b) The written request for rehire is physically delivered, mailed or electronically transferred to the appointing officer within such time as provided by the written policy of the civil service commission.

(4) All incumbents and applicants thereafter appointed shall hold office, place, position or employment only during good behavior, and any such person may be removed, discharged, suspended without pay, demoted, reduced in rank, deprived of vacation privileges or other special privileges for any of the following reasons, subject to the determination of the facts in each case by the commission:

(a) Incompetency, inefficiency or inattention to or dereliction of duty;

(b) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other

act of omission or commission tending to injure the public service; willful failure on the part of the employee to properly conduct himself, or any other willful violation of the civil service rules and regulations;

(c) Mental or physical unfitness for the position which the employee holds;

(d) Dishonest, disgraceful, immoral or prejudicial conduct;

(e) Drunkenness or use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee or which prevents the employee from properly performing the functions and duties of any position under civil service;

(f) Conviction of a crime that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#);

(g) Any other act or failure to act, which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

### **History.**

1967, ch. 429, § 280, p. 1249; am. 2002, ch. 51, § 1, p. 117; am. 2020, ch. 175, § 11, p. 500.

## **STATUTORY NOTES**

### **Amendments.**

The 2020 amendment, by ch. 175, rewrote paragraph (4)(b), which formerly read: “Conviction of a felony or a misdemeanor involving moral turpitude.”

## **CASE NOTES**

[Cited International Ass’n of Firefighters Local No. 672 v. Boise City, 136 Idaho 162, 30 P.3d 940 \(2001\).](#)

## **RESEARCH REFERENCES**

**ALR.** — Preemployment conduct as ground for discharge of civil service employee having permanent status. [4 A.L.R.3d 488](#).

Determination as to good faith in abolition of public service or employment subject to civil service or merit system. [87 A.L.R.3d 1165](#).

Sexual misconduct or irregularity as amounting to conduct unbecoming an officer, justifying officer's demotion or removal or suspension from duty. [9 A.L.R.4th 614](#).

**First amendment** protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of free speech. [106 A.L.R. Fed. 396](#).

Nonsexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying police officer's demotion or removal or suspension from duty. [19 A.L.R.6th 217](#).

**§ 50-1605. Appointment to positions — Certificate of eligibles — Reexamination.** — When a position in the classified civil service is to be filled, the appointing authority shall notify the civil service commissioner and the commission shall, as soon as possible, certify the names of three (3) or so many as there be if less than three (3) on the eligible list, to the appointing officer, provided, the said commission shall always certify the persons having the highest standing in the eligible list for the position to be filled, and each position shall be filled by one (1) of the persons certified by the said commission. All appointments shall be probationary for such periods as may be prescribed by the civil service commission. All persons not appointed shall be restored to their relative positions on the eligible list.

All persons, having been on the eligible list for two (2) years without appointment, shall be removed therefrom and can only be returned thereto upon regular examination.

**History.**

1967, ch. 429, § 281, p. 1249.



**§ 50-1606. Promotion for merit.** — The civil service commission shall provide for promotions within the departments under the classified civil service on the basis of ascertained merit, seniority in service, standing obtained by competitive examination, and in all cases where practicable, provide that vacancies shall be filled by promotion from among such members of the next lower rank as submit themselves for examination for promotion. The civil service commission shall certify the names of not more than three (3) applicants having the highest rating to the appointing authority for each promotion.

**History.**

1967, ch. 429, § 282, p. 1249.

**§ 50-1607. Employees of six months when ordinance becomes effective.** — All persons who are and have been continuously in the employ of the city, for at least six (6) months next prior to the effective date of the civil service ordinance, shall retain their respective employment, subject to removal or suspension in accordance with the rules and regulations of the civil service commission.

**History.**

1967, ch. 429, § 283, p. 1249.

**§ 50-1608. Temporary appointments.** — The appointing authority of each department under the classified civil service, by and with the advice and consent of the civil service commission, may employ any person for temporary work without making such appointment from the certified list; but under no circumstances shall such temporary employee be appointed to a permanent position unless he shall have been duly certified by the civil service commission as in other cases.

**History.**

1967, ch. 429, § 284, p. 1249.

**§ 50-1609. Removals — Suspensions — Appeals — Hearings.** — All persons in the classified civil service shall be subject to suspension from office or employment by the head of the department for misconduct, incompetency or failure to properly observe the rules of the department. Upon suspension by the head of the department or accusation by the appointing power, any citizen or taxpayer, a written statement of such suspension or accusation, in general terms, shall be served upon the accused and a duplicate filed with the commission; provided, the head of the department may suspend a member pending the confirmation of the suspension by the appointing power, which confirmation must be within three (3) days. The finding of the civil service commission upon the said charges shall be certified to the head of the department and shall forthwith be enforced and followed by him. The aggrieved party shall, however, have the right within ten (10) days from the time of his removal, suspension, demotion or discharge as the case may be, to file with the commission a written demand for an investigation. In conducting such investigation, the commission shall be confined to the determination of the question as to whether such removal, suspension, demotion or discharge was made for political or religious reasons, or was made in good faith and for cause. All investigations made by the commission pursuant to the provisions of this section shall be by public hearing after reasonable notice to the accused of the time and place of such hearing. At such hearing the accused shall be afforded an opportunity of appearing in person or by counsel and presenting his defense. If such judgment or order be upheld by a majority of the commission, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner; provided, however, that such hearing shall be confined to the determination as to whether the judgment or order of removal, discharge, demotion or suspension by the commission, was made in good faith and for cause, and no appeal to such court shall be taken except upon such ground or grounds.

**History.**

1967, ch. 429, § 285, p. 1249.

## CASE NOTES

Findings of commission.

Judicial review.

Summary appeal in district court.

### **Findings of Commission.**

The civil service commission made findings which complied on their face with this section, where the commission determined that the police officer used excessive force when disciplining his stepchildren, causing injuries to those children, that his actions demonstrated an inability to control his temper and an inability to react appropriately as a result thereof, that his inability to control his temper cast serious doubt upon his ability to perform his duties as a police officer, and that no evidence was presented suggesting he was discharged for political or religious reasons. *Dexter v. Idaho Falls City Police Dep't*, 113 Idaho 179, 742 P.2d 434 (Ct. App. 1987).

### **Judicial Review.**

On judicial review of a civil service commission determination, the district court is required to conduct a full review of the whole record and, where the commission's conclusions are unsupported by substantial evidence, its function encompasses stating, both for the benefit of the parties and the supreme court, its reasoning and conclusions which very well may but need not take the form of findings and conclusions. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

The character of the commission, the roles committed to it by statute, and the manner in which the commission functioned serve to vary the standard of judicial review. *Local 1494 of Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

### **Summary Appeal in District Court.**

Where the trial court heard oral argument of counsel, which consumed 30 minutes, following which the district court, within the confines of his chambers, made his review of the appeal record over a period of time extending from June 27, 1977, to August 25, 1977, it was clear that the

district court proceeded in the “summary” manner required by this section, and the procedure was that which the parties envisioned as required by the section and their stipulation. Local 1494 of Int’l Ass’n of Firefighters v. City of Coeur d’Alene, 99 Idaho 630, 586 P.2d 1346 (1978).

**Cited** Peterson v. City of Pocatello, 117 Idaho 234, 786 P.2d 1136 (Ct. App. 1990).

**§ 50-1610. Removals due to reduction of force.** — Nothing in sections 50-1601 through 50-1610[, Idaho Code,] shall prohibit the city council from reducing the force employed, but such reduction shall be effected in inverse order of seniority of employment, and any employee who is removed on this account shall be placed at the head of the eligible list.

**History.**

1967, ch. 429, § 286, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

Idaho Code Ch. 17

• [Title 50](#)», «[Ch. 17](#)»



Chapter 17  
LOCAL IMPROVEMENT DISTRICT CODE — GUARANTEE  
FUND

Sec.

50-1701. Short title.

50-1702. Definitions.

50-1703. Powers conferred.

50-1703A. Local business improvement districts.

50-1704. Improvements on railroad tracks or on one side of a street.

50-1705. Modified district.

50-1706. Initiation of organization of district.

50-1706A. Fees.

50-1707. Resolution of intention to create district.

50-1708. Notice of intention and hearing.

50-1709. Protests and hearing.

50-1710. Ordinance creating improvement district and procedure for construction bids.

50-1711. Limitation on assessments against property.

50-1712. Preparation of assessment roll and notice of hearing thereon.

50-1713. Notice of hearing on assessment roll.

50-1714. Hearing objections to assessment roll and confirmation.

50-1715. Confirmation of assessment roll.

50-1716. Notice and payment of assessments.

50-1717. Installment docket.

50-1718. Appeal procedure — Exclusive remedy.

50-1719. Additional improvements.

50-1720. Reassessment of benefits.

50-1721. Lien of assessment — Foreclosure.

50-1721A. Segregation of assessments.

50-1722. Bonds — Registered warrants — Interim warrants.

50-1723. Liability of municipality.

50-1724. Bond and interest funds.

50-1725. Reissue of bonds.

50-1726. Rights against assessments.

50-1727. Publication and conclusiveness of proceedings.

50-1728. Consolidated local improvement districts authorized.

50-1729 — 50-1737. Assessments — Bonds. [Repealed.]

50-1738. Delinquent installments.

50-1739. Delinquent certificates.

50-1740. Delinquent certificate register.

50-1741. Assignment of delinquent certificates.

50-1742. Form of assignment — Assignment by purchaser.

50-1743. Redemption.

50-1744. Deed.

50-1745. Notice of expiration of time of redemption.

50-1746. Proof of notice.

50-1747. Effect of deed as evidence.

50-1748. Delinquency certificate for subsequent instalments.

50-1749. Fees of treasurer.

50-1750. Suit to quiet title.

50-1751. Sale of property deeded to municipality.

50-1752. Sale of property after maturity of bonds.

50-1753. Disposition of funds.

50-1754. Delinquent certificate not assignable during pendency of action.

50-1755. Duties of officers.

50-1756 — 50-1761. Prior districts — Construction — Separability — Validation — Limitation on assessments. [Repealed.]

50-1762. Local improvement guarantee fund — Creation of fund.

50-1763. Bonds, warrants and coupons, when paid out of fund — Nonpayment for want of funds — Interest.

50-1764. Subrogation of municipality to rights of payee — Surplus funds — Payment into fund — Preferences.

50-1765. Maintenance and operation and sources of fund.

50-1766. Replenishment of fund — Warrants — Issuance against fund — Tax levy.

50-1767. Bonds and warrants — Revenues from which payable.

50-1768. Bonds payable from fund.

50-1769. Excess in fund — Disposition.

50-1770. Unpatented lands — Assessment for improvements.

50-1771. Reserve fund authorized.

50-1772. Commercially reasonable credit assurances.

**§ 50-1701. Short title.** — Chapter 17, title 50, Idaho Code, shall be known and cited as the “Local Improvement District Code.”

**History.**

I.C., § 50-1701, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former §§ 50-1701 — 50-1727, which comprised S.L. 1967, ch. 429, §§ 287-314; am. 1968 (2nd E.S.), ch. 21, §§ 1-3; am. 1969, ch. 41, §§ 1-3, 6; am. 1969, ch. 181, § 1; am. 1970, ch. 99, § 1; am. 1970, ch. 133, §§ 14, 15; am. 1971, ch. 159, § 1; am. 1974, ch. 55, § 1; am. 1975, ch. 93, §§ 1, 2; am. 1975, ch. 168, §§ 1-3, were repealed by S.L. 1976, ch. 160, § 1.

Prior to such repeal, section 472 of S.L. 1967, ch. 429 had repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Compiler’s Notes.**

Section 3 of S.L. 1976, ch. 160 read: “All local improvement districts heretofore created or attempted to be created, and all assessments heretofore levied therein or attempted to be levied therein, which have not heretofore been adjudicated invalid, and all notices, assessments and proceedings taken in relation thereto whether void, defective or invalid, in all cases where the improvements contemplated have been made or contracted for, are hereby ratified, validated and confirmed and made sufficient to the same extent as if the same were perfected in the first instance. All acts and proceedings of any municipality had under or by virtue of the local improvement district code, and all contracts heretofore or hereafter made, and all warrants and bonds heretofore or hereafter issued pursuant to said acts and proceedings, are hereby ratified, validated and confirmed. All sections of the local improvement district code not specifically repealed herein are hereby ratified, validated and confirmed and made sufficient to the same extent as if they had been properly enacted in the first instance.”

## CASE NOTES

### **Validation of Void Assessments.**

Inasmuch as Idaho **Const., Art. XI, § 12** prohibits the imposition of laws imposing new pecuniary liabilities in respect to transactions or considerations already past, Laws 1976, c. 160, § 3, which claims to validate all invalid assessments previously levied, cannot be the basis upon which property owners could be reassessed for improvement project costs incurred prior to the time the city acquired jurisdiction to incur such costs. **Butler v. City of Blackfoot**, 98 Idaho 854, 574 P.2d 542 (1978).

**Cited** **Ward v. Ada County Hwy. Dist.**, 106 Idaho 889, 684 P.2d 291 (1984); **Simmons v. City of Moscow**, 111 Idaho 14, 720 P.2d 197 (1986).

### Decisions Under Prior Law

Constitutionality.

Costs incurred prior to creation of district.

Drainage districts.

Due process.

Statutory creation.

Validity.

Waiver of objections.

### **Constitutionality.**

Provisions of former local improvement district code were not unconstitutional as violative of provision against taking of property without due process of law. **Bell v. City of Moscow**, 48 Idaho 65, 279 P. 1095 (1929); **Wheeler v. City of Caldwell**, 48 Idaho 77, 279 P. 412 (1929).

### **Costs Incurred Prior to Creation of District.**

Inasmuch as a municipality acquired no statutory jurisdiction to incur costs to be assessed against abutting property owners under the 1967 local improvement district code until after the city council had held a hearing for public protests, any costs generated prior to the proper creation of a special improvement district could not be assessed against allegedly affected

property owners. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

### **Drainage Districts.**

A drainage district was a local improvement district and because of the mere fact that it was not included within the local improvement code, it does not necessarily follow that it was not a local improvement district, if it was such in fact. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

### **Due Process.**

Due process in the organization of a special assessment district and issuance of bonds thereby was afforded by the municipality's notice to all interested parties, hearing before the council, and city's assessment of benefits for the district. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **Statutory Creation.**

Special improvement districts were purely creatures of statute. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

### **Validity.**

Former sections governing special assessments for street improvements violated no constitutional right of owners of property assessed, as long as benefits continued respectively to equal the individual assessments. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

Paving assessment against abutting property was held not discriminatory because city paved street in front of other property abutting on line of improvement at its own expense. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

### **Waiver of Objections.**

Property owners who failed to object to street assessments and to take advantage of opportunity for hearing before city council could not thereafter question assessment in federal court. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

**§ 50-1702. Definitions.** — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively given herein.

(a) Municipality. Counties, water and/or sewer districts organized pursuant to the provisions of chapter 32, title 42, Idaho Code, highway districts, cities, including but not limited to those working under a special charter which have by such charter accepted the provisions of this code, and any city or like municipality hereafter created or authorized by the legislature unless one or more of the above shall be specifically excepted in any particular section of this code.

(b) Street or streets. The entire legal right of way and highways, roads, boulevards, avenues, streets, alleys, courts and all public places within a city, county, highway district, or water and/or sewer district.

(c) Council. The board of county commissioners, board of directors of water and/or sewer districts, the board of highway commissioners of any highway district, the mayor and council of all incorporated municipalities as well as any other municipal body or board which may now, or hereafter be authorized by law to do and perform any act in relation to the making of local improvements within any municipality as provided for in this code.

(d) Clerk, attorney or other municipal officer. The appropriate and comparable city and county officers with regard to city and county local improvement districts, highway district officers with regard to such highway district local improvement districts, and water and/or sewer district officers in regard to water and/or sewer local improvement districts.

(e) Engineer. The official engineer of the municipality or one specially retained for purposes of operating under this code.

(f) Off-street parking. All machinery, equipment, materials and appurtenances, including lands, easements, rights of way and buildings required, necessary or useful for the parking of vehicles on lands or places other than public streets.

(g) Resident owner or resident owners. The owner of property within, and who resides in a dwelling house situate in whole or in part within the

limits of a local improvement district, or a proposed local improvement district; and a corporation, joint stock association, partnership, individual proprietor, or other form of business enterprise owning real property, and having its principal place of business, within any such district or proposed district.

(h) Cost and expenses. The contract price of all improvements, including the cost of making improvements within any intersection, together with any costs or expenses incurred for engineering, clerical, printing and legal services as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as shall be considered necessary by the council.

**History.**

I.C., § 50-1702, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 15-1702 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words "this code", see § 50-1701.

**CASE NOTES**

**Assessment of Costs.**

Engineering and design expenses incurred prior to the formation of the local improvement district were properly assessed against the property owners. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).



**§ 50-1703. Powers conferred.** — (a) The governing body of any municipality shall have power to make or cause to be made any one (1) or more or combination of the following improvements:

- (1) To establish grades and lay out, establish, open, extend and widen any local, collector, arterial or other street, sidewalk, alley or off-street parking facility;
- (2) To purchase, acquire, construct, improve, repair, light, grade, pave, repave, surface, resurface, curb, gutter, sewer, drain, landscape and beautify any street, sidewalk or alley;
- (3) To purchase, construct, reconstruct, extend, maintain or repair bridges, sidewalks, crosswalks, driveways, culverts, sanitary sewers, storm sewers, ditches, drains, conduits, flood barriers and channels for sanitary and drainage purposes, or either or both thereof, with inlets or outlets, manholes, catch basins, flush tanks, treatment systems and all other sewer and drainage appurtenances necessary for the comfort, convenience, health and well-being of the inhabitants of the municipality; provided, that any improvements for sanitary sewer facilities shall be constructed so as to conform with the general rules of the Idaho department of environmental quality;
- (4) To construct, reconstruct, extend, maintain, or repair lines, facilities and equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously established municipally-owned electrical distribution system, to a district within the boundaries of the municipality;
- (5) To plant, or cause to be planted, set out, cultivate and maintain lawns, shade trees or other landscaping;
- (6) To cover, fence, safeguard or enclose reservoirs, canals, ditches and watercourses and to construct, reconstruct, extend, line or reline, maintain and repair waterworks, reservoirs, canals, ditches, pipes, mains, hydrants, and other water facilities for the purpose of supplying water for domestic, irrigation and fire protection purposes, or any of them;

regulating, controlling or distributing the same and regulating and controlling water and watercourses leading into the municipality;

(7) To acquire, construct, reconstruct, extend, maintain or repair parking lots or other facilities for the parking of vehicles on or off streets;

(8) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;

(9) To remove any nonconforming existing facility or structure in the areas to be improved;

(10) To construct, reconstruct, extend, maintain or repair optional improvements;

(11) To acquire by purchase, gift, condemnation, or otherwise any real or personal property within the limits of the municipality as in the judgment of the council may be necessary or convenient in order to make any of such improvements or otherwise to carry out the purposes of this chapter;

(12) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;

(13) To construct and install all such structures, equipment and other items and to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any of such improvements in a proper manner;

(14) To purchase, build, construct, reconstruct or otherwise improve parking facilities and all other appurtenances necessary to provide adequate off-street parking, and to that end may acquire real or personal property by purchase, gift, condemnation or otherwise, and may own, possess and maintain such real or personal property within the limits of the municipality as in the judgment of the council may be necessary and convenient for such purposes; and

(15) To acquire, purchase, build, construct or reconstruct irrigation systems, install underground tiling and cover open irrigation ditches.

(b) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the

governing body of a municipality may create local improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim or registered warrants and local improvement bonds as provided in this chapter.

**History.**

I.C., § 50-1703, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 2, p. 722; am. 2001, ch. 103, § 94, p. 253.

**STATUTORY NOTES**

**Cross References.**

Department of environmental quality, § 39-104.

**Prior Laws.**

Former § 50-1703 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**CASE NOTES**

**Cited** Mann v. Granite Reeder Water & Sewer Dist., 143 Idaho 248, 141 P.3d 1117 (2006).

**§ 50-1703A. Local business improvement districts.** — (1) The legislature finds that the development of architectural themes for cities is a legitimate method to further the public health, safety and welfare of cities. The purpose of the provisions of this section is to authorize cities to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings to bring business buildings within the district into conformity with the architectural theme adopted by the city. The improvement of business buildings in conformity with the architectural theme adopted by the city is hereby declared a public purpose.

(2) Municipalities are hereby authorized to create local business improvement districts for the purpose of constructing and financing the cost and expense of improvements to the exterior portions of business buildings in order to bring business buildings within such districts into conformity with an architectural theme adopted by the city.

(3) The term “business building” includes any building devoted primarily to business purposes, including professional and governmental purposes.

(4) It is the intent of the provisions of this section that local business improvement districts be administered in all respects as are local improvement districts, except as provided herein.

(5) Local business improvement districts shall be initiated by presentment to the council of a petition containing the following: (a) A description of the particular lots and parcels to be included in the proposed district;

(b) A description of the improvements to be constructed and financed by the district;

(c) The estimated cost of the improvements;

(d) The percentage of the cost to be assessed against each lot and parcel within the district; and (e) The signature of the owner of record of each lot or parcel to be included within the district, consenting to inclusion of the lot or parcel within the district.

(6) The total project amount assessed against each parcel within the district shall be no more than twenty percent (20%) of the market value for assessment purposes of the parcel.

(7) Lots and parcels need not be contiguous in order to be included within a district. No lot or parcel may be included within a district without the written consent of the owner thereof; provided, that, after the district has been created, consent to inclusion in the district may not subsequently be withdrawn prior to payment of all costs of the improvements.

(8) Upon receipt of the petition, the council shall adopt a resolution of intention, substantially in the form provided in [section 50-1707, Idaho Code](#), stating the council's intention to create the district, to make the improvements, and to levy assessments to pay the cost thereof. The resolution shall contain a statement as to the percentage of the costs to be assessed against each particular lot or parcel within the proposed district.

(9) Notice shall be given and a hearing conducted in the manner provided in sections 50-1708 and 50-1709, Idaho Code. If, after such hearing, the council determines to create the district, it shall proceed as provided in this chapter for the creation of the district, the construction of the improvements, the preparation of, hearing upon, and confirmation of the assessment roll, the collection of assessments and the issuance of bonds or warrants. Each assessment shall be a lien upon the property against which it is assessed, as provided in [section 50-1721, Idaho Code](#).

#### **History.**

[I.C., § 50-1703A](#), as added by 1987, ch. 26, § 1, p. 34.

**§ 50-1704. Improvements on railroad tracks or on one side of a street.** — (a) Whenever any improvement shall be made upon any street occupied by the tracks of any railroad, the council is authorized and it shall be its duty to assess against such railroad situated within the improvement district its just proportion of the cost and expenses of making such improvement, which proportion shall be estimated on a basis of charging to said railroad not less than the cost and expenses of improving the space between the rails of said tracks, and for a distance of two (2) feet on each side of said rails. Said assessment shall be made on the rolls of said improvement district against the railway or railroad, the same as against other property, and said assessment shall be a lien upon said portion of said railroad from the time of the levy of the assessment by the council, and shall be collected in the same manner as other local improvement district assessments.

(b) When any work or improvement herein authorized is done or made on only one (1) side of the center line of any street, assessments to cover the cost and expenses of such work or improvement may be levied on the lots and lands on that side only or on both sides, in amounts on each side as the council shall determine based on the benefits resulting to the property on each side.

**History.**

I.C., § 50-1704, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1704 was repealed. See Prior Laws, § 50-1701.

**§ 50-1705. Modified district.** — Whenever any local improvement shall be of such nature and character that the special benefits resulting therefrom extend beyond the boundaries of the property abutting the improvement or whenever the special benefits do not accrue to some or all properties abutting the improvements, but to other properties, the council may create a modified local improvement district, which shall include as near as may be determined all the property especially benefited by such improvements. Provided however, that by unanimous agreement of the property owners to be assessed, properties may be included or excluded from the local improvement district regardless of whether they are specially benefited by the improvements. When such district is created, all property therein shall be assessed for a portion of the cost and expenses of such improvements, to be determined and fixed by the council when the district is created.

**History.**

I.C., § 50-1705, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 3, p. 722.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1705 was repealed. See Prior Laws, § 50-1701.

**§ 50-1706. Initiation of organization of district.** — The organization of any local improvement district herein provided for may be initiated upon a petition signed by not less than sixty percent (60%) of the resident owners or two-thirds (2/3) of the owners of property subject to assessment within such proposed improvement district, or by resolution of the council adopted by an affirmative vote of a majority of the members of the full council at a regular or special meeting thereof. The terms of a petition shall include a description of the boundaries of a proposed district, the improvements to be made and the property to be assessed.

**History.**

**I.C., § 50-1706**, as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 4, p. 722.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1706 was repealed. See Prior Laws, § 50-1701.



**§ 50-1706A. Fees.** — In the case of any local improvement district initiated by petition, the petitioners may authorize the council to charge the petitioners a reasonable fee for the council to retain outside advisors to assist the council in assessing the proposed local improvement district. The council may not charge the petitioners any fee for review of a proposed local improvement district unless the petitioners authorize the fee.

**History.**

I.C., § 50-1706A, as added by 1999, ch. 291, § 5, p. 722.

**§ 50-1707. Resolution of intention to create district.** — Upon the filing of a petition or upon initiation of a district by council action, the council shall at a regular or special meeting adopt a resolution giving notice of its intention to create the district, to make the improvements and to levy assessments to pay all or a part thereof. The notice shall contain:

(a) A description of the boundaries of the district to be created and the property to be assessed, sufficient to inform the owners thereof that their property is to be assessed.

(b) A general description of the improvements contemplated together with an estimate of the total cost and expenses of the same and a statement of the percentage or other calculation of the total cost and expenses of the improvements which will be paid from a levy of assessments on property benefited and the percentage or calculation of the total costs and expenses which will be paid from the general funds of the municipality or from such other source specified in the notice.

(c) A statement that the costs and expenses of the improvements will be assessed against the lots and lands specially benefited by such improvements, except as provided in [section 50-1705, Idaho Code](#), and included in the district to be created according to a front foot method, or a square foot method, or a combination thereof, or in proportion to the benefits derived to such property by said improvements, or by another method agreed to by all property owners to be assessed, and the council shall state the method so determined in said notice.

(d) A statement that the district is to be a modified district within the meaning of this act, if the same is true, and the boundaries of such modified district shall be given.

(e) A statement of the time within which and the place at which protests shall be filed and of the time and place at which the council will conduct a public hearing to consider such protests.

### **History.**

[I.C., § 50-1707](#), as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 6, p. 722; am. 2007, ch. 58, § 1, p. 140.

## STATUTORY NOTES

### **Prior Laws.**

Former § 50-1707 was repealed. See Prior Laws, § 50-1701.

### **Amendments.**

The 2007 amendment, by ch. 58, inserted “or” preceding “in proportion to the benefits” in subsection (c).

### **Compiler’s Notes.**

The term “this act”, in subsection (4), refers to S.L. 1976, Chapter 160, which is codified as §§ 50-1701 to 50-1703, 50-1704 to 50-1706, 50-1707 to 50-1721, and 50-1722 to 50-1727.

### **Effective Dates.**

Section 2 of S.L. 2007, ch. 58 declared an emergency. Approved March 12, 2007.

## CASE NOTES

Benefited lands.

Calculation of assessments.

Disqualification of council member.

Method of assessment.

### **Benefited Lands.**

Any lands assessed within the proposed local improvement district must be “benefited” by such improvements. [Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 \(1984\).](#)

### **Calculation of Assessments.**

The commissioners of a local improvement district (LID) did not err in determining that the assessments to be made on the properties within the LID for the costs of street improvements should be calculated on the front foot method, and the said commissioners did not err in failing to modify the assessment so imposed on the plaintiff property owner by consideration of

the benefits conferred by the project on the separate properties in the district. *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

### **Disqualification of Council Member.**

The ownership of property in a local improvement district (LID) does not disqualify a council member from participating in proceedings to form a LID or assess property levies. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

### **Method of Assessment.**

A basic qualification of an assessment method is that there must be a factual correlation between the result of an assessment formula and the actual benefit conferred. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

In applying the “benefits derived” method of assessment pursuant to subdivision (c) of this section, a municipality may consider square footage and zones based on the proximity to improvements made in reaching an equitable distribution of costs in relation to benefits. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

In applying the “benefits derived” method of assessment pursuant to subdivision (c) of this section, the city supported its choice of a 100-40-20 ratio to allocate improvement costs with testimony that an architectural firm had described to the steering committee and the city council a number of assessment methods, including the use of a ratio, the city council deliberated over the methods available, considering a 100-50-25 ratio as well as the one ultimately selected, and the assessments levied appeared to be reasonable approximations of value of the benefits derived by each property owner. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

When the “benefits derived” method of assessment is used pursuant to subdivision (c) of this section, “benefits” need not be defined as the increase in market value of each particular parcel of property before and after improvements, considering the property’s highest and best use. Instead, the city can consider special benefits, including stabilization of property values and rents; improved access to downtown businesses; enhanced ability to use

the downtown area for public activities; increased safety for downtown pedestrians and business customers; improved appearance of the downtown area; and increased likelihood of preservation and restoration of historic downtown buildings. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

The front or square footage methods of assessment are a less flexible method of apportioning costs than the benefits derived method. The front and square footage methods may be satisfactory where an improvement is limited in scope and of proportionally equal benefit to all affected properties, such as a sewer, a roadway or a water line; however, where benefits are contemplated to be less immediate and measurable, a method of assessment based solely on front or square footage will be inadequate. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

#### Decisions Under Prior Law

Basis of assessments.

Defective ordinance.

Estimate by engineer.

Failure to file affidavit.

“General character” defined.

General description and cost estimates.

Notice of organization as due process.

Notice to nonresident taxpayer.

Purpose of ordinance.

Substantial compliance.

Sufficiency of description.

Test of ordinance.

Waiver of defects.

#### **Basis of Assessments.**

Former section governing creation of sewerage districts contemplated that assessments be made in accordance with the benefits received by each

tract of land. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

### **Defective Ordinance.**

Ordinance of intention which stated that sewerage district should not include, for assessment, property occupied by the cross streets and alleys in said district, omitting streets, was defective. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

Where ordinance was defective, it could be cured by positive statement in the law authorizing the ordinance; property owners and other persons interested had notice by the statute itself. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

### **Estimate by Engineer.**

Former section governing creation of sewerage districts contemplated that, before assessment roll could be properly prepared or contract let for construction of sewer system, there was required to be basis for same which requires estimate of costs by city engineer. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

### **Failure to File Affidavit.**

Mere failure to file affidavit of publication was not jurisdictional and, in such case, where publication was actually made, full notice was, in fact, given as required by statute and no property owner was in any way injured. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

### **“General Character” Defined.**

“General character of proposed improvement” did not mean that special, particular, minute or detailed description of work should be stated, but that general statement should be made pertaining to whole class or order; belonging to a whole rather than a part. It was optional with council whether it should adopt any system of universal application or pursue any plan which it may deem best suited to improvement contemplated at given time. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

### **General Description and Cost Estimates.**

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the

estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of the elaborate provisions for public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

### **Notice of Organization as Due Process.**

Due process in the organization of special assessment district and issuance of bonds thereby was afforded by the municipality's notice to all interested parties, hearing before the council, and the municipality's assessment of benefits for the district. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **Notice to Nonresident Taxpayer.**

Notice of municipality's organization of a special assessment district to a taxpayer outside of the district was unnecessary to afford due process where no burden was placed on such taxpayer's land. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **Purpose of Ordinance.**

Resolution or ordinance of intention was for purpose of giving notice to property owners who would be subjected to costs and assessments of intention of council. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

### **Substantial Compliance.**

It was sufficient compliance with former section governing creation of sewerage districts for city council to pass an ordinance giving names and description of streets to be improved and character of improvement to be made, and reciting that public interest and convenience demand that such improvement be made, and designating a time on or before which protests could be made and filed with the city clerk against such proposed improvement. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

Where resolution or ordinance of intention described exterior boundaries of improvement district proposed to be established, and also contained number of lots and blocks within such district that would be affected by such improvement, it was sufficient compliance with former section

governing creation of sewerage districts, since the streets and alleys could be readily ascertained and determined from said description. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

In assessing property for local improvements a substantial compliance with the law was sufficient. *McQueen v. City of Moscow*, 28 Idaho 146, 152 P. 799 (1915).

In ordinance ordering improvements and assessment, the lots and tracts of land to be assessed were required to be described by their subdivisions and present ownership, but this was not required in the ordinance of intention. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

### **Sufficiency of Description.**

Former section governing creation of sewerage districts was required to be liberally construed and substantial compliance was all that was required of council. Property sought to be charged was sufficiently described if it could be identified. *Platt v. City of Payette*, 19 Idaho 470, 114 P. 25 (1911).

Where ordinance declaring intention of council to organize a sewer district and construct a sewer system stated that character of proposed lateral system should be that of gravity and according to plans and specifications on file in office of city engineer it was sufficient compliance with former section governing creation of sewerage districts. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

Notice advising that certain proposed work would be done in accordance with plans and specifications in office of city engineer was sufficient. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

A proposed change in the plan of a sewer system which did not increase the cost, and no one was injured thereby, was not such a departure from the plan and construction described in the ordinance of intention as would render the proceedings void. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

Where a village passed ordinances declaring an intention to establish certain sewer districts and defining their boundaries and referring to certain plans, outlines and estimates of cost thereof in office of village clerk, where persons interested were thereby referred for more detailed information, such



proceedings were sufficient compliance. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

Where boundary lines given in an ordinance were boundary lines of a city they were sufficient. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

### **Test of Ordinance.**

Test as to whether notice of intention complies with law was whether it furnished an effective opportunity to be heard and gave reasonable notice thereof to those interested. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

### **Waiver of Defects.**

Protest by property owner against creation of proposed improvement district waived objection to the sufficiency of notice of the description of district. *Coughanour v. City of Payette*, 26 Idaho 280, 142 P. 1076 (1914).

**§ 50-1708. Notice of intention and hearing.** — The notice of intention shall be published in the official newspaper of the municipality in three (3) consecutive issues if a daily newspaper, or in two (2) issues if a weekly newspaper or in case no newspaper is published in such municipality then by posting for five (5) days in three (3) public places within the proposed improvement district. A copy of such notice shall be mailed to each owner of property if known or his agent if known, within the limits of the proposed improvement district, addressed to such person at his post office address if known, or if unknown, to a post office in the municipality where the improvement is to be made. Ownership of property shall be determined as of the date of the adoption of the resolution of intent to create. The hearing shall take place not less than ten (10) days from the date of the first of said publications or postings or the date of said mailing, whichever is later.

**History.**

I.C., § 50-1708, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1708 was repealed. See Prior Laws, § 50-1701.

**CASE NOTES**

Decisions Under Prior Law [Nature of improvements and estimated costs.](#)

[Notice to nonresident taxpayer.](#)

**[Nature of Improvements and Estimated Costs.](#)**

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of

the elaborate provisions for public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

**Notice to Nonresident Taxpayer.**

Notice of city's organization of special assessment district to a taxpayer outside of the district was unnecessary to afford due process, where no burden was placed on the land of such taxpayers. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

**§ 50-1709. Protests and hearing.** — Any owner of property to be assessed in the proposed local improvement district described in the notice of intention shall have the right, in advance of the hearing, to file in writing a protest to the creation of the district or making any other objections in relation thereto. At the date, time and place specified in the notice of intention the council shall in open and public session consider all protests which have been filed in writing in advance of the hearing, and the hearing may be adjourned from time to time to a fixed future time and place for the same until all such protests have been heard. The decision of the council as to all protests shall be conclusive and final, and if it should so determine, the council may delete any improvements or any property which had originally been contemplated in the said notice. If owners of more than two-thirds ( $2/3$ ) of the property to be assessed protest any of the proposed improvements which affect their property, the council shall not proceed further with the work so protested unless a majority of the members of the full council shall vote to proceed with such work. The vote on the hereinafter mentioned ordinance creating the improvement district shall constitute the vote as to whether or not the council will proceed. Any property owner who fails to file a protest within the time specified, or having filed one withdraws said protest, shall be deemed to have waived any objection to the creation of the district, the making of the improvements, and the inclusion of his property in the district. Such waiver shall not preclude his right to object to the amount of the assessment at the later hearing provided for such purpose.

In cases where the creation of a local improvement district has been proposed by the governing board of an entity other than a city council or board of county commissioners, and where written protests are filed and sixty percent (60%) of the resident owners or the owners of two-thirds ( $2/3$ ) of the lots and lands subject to assessment within such proposed improvement district have signed such protest, the governing board of the governmental entity proposing the local improvement district shall not be allowed to proceed with the creation of the district for a period of one hundred eighty (180) days. During this one hundred eighty (180) day period, the city council shall act as a review board for as much of the

proposed district as is situated within the boundaries of the city, and the board of county commissioners shall act as a review board for that portion of the proposed local improvement district as is situated within the unincorporated portion of the county. As a review board, the city council or board of county commissioners shall review the record of the proposal, including conformance with procedural provisions of law. The city council or board of county commissioners shall also evaluate the necessity or desirability of the proposed district, and shall take into consideration the creation of the proposed local improvement district as it relates to the following: (a) the health, safety and welfare of the residents of the proposed district, or of persons having the necessity to travel through the district; and (b) the financial impact of the creation and implementation of the objectives of the proposed district upon the property owners within the proposed district, especially in light of projects recently undertaken or contemplated for the near future within the district.

After its evaluation, the city council shall approve, modify or reject the proposal for the creation of a local improvement district for as much of the proposed district as is situated within the boundaries of the city, and the board of county commissioners shall approve, modify or reject the proposal for the creation of a local improvement district for as much of the proposed district as is situated within the unincorporated portion of the county.

**History.**

[I.C., § 50-1709](#), as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 7, p. 722.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1709 was repealed. See Prior Laws, § 50-1701.

**CASE NOTES**

[Constitutionality.](#)

[Statute of limitations.](#)

[Constitutionality.](#)

This section, which sets out the procedure whereby a proposed local improvement district may be protested by affected property owners, is not unconstitutional as a denial of the due process rights of the protesting property owners. *Mangum v. City of Orofino*, 105 Idaho 307, 669 P.2d 196 (1983).

### **Statute of Limitations.**

The 30-day limitation period of § 50-1727 has application to a “contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby,” and not to a constitutional attack on a statute. Thus, where property owners objecting to the formation of a local improvement district challenged the constitutionality of the authorizing statute (this section) itself, the statutory period of limitations did not apply. *Mangum v. City of Orofino*, 105 Idaho 307, 669 P.2d 196 (1983).

### **Decisions Under Prior Law**

#### **Decision of council.**

#### **Waiver.**

#### **Decision of Council.**

Decision of city council on all protests to creation of district or making of improvements was final and conclusive, and after decision, said council was deemed to have acquired jurisdiction to order improvements. *Bell v. City of Moscow*, 48 Idaho 65, 279 P. 1095 (1929).

#### **Waiver.**

If property owner did not object to creation of district, as herein provided, he would be deemed to have waived any right he had to object. *City of Caldwell v. Village of Mt. Home*, 29 Idaho 13, 156 P. 909 (1916).

**§ 50-1710. Ordinance creating improvement district and procedure for construction bids.** — If, after the hearing on the creation of the district, the council finds (a) that the district will be for the best interest of the property affected and the municipality, (b) that there is reasonable probability that the obligations of such district will be paid, and (c) the value of the property within the proposed district, including the proposed improvements, is sufficient, it shall then enact an ordinance providing for such improvements and creating a local improvement district to be called “Local Improvement District No. . . . . for . . . . ., Idaho,” which shall include all of the property within said district in accordance with the findings of the council, and said ordinance shall set forth the boundaries of the district, provide the improvements which shall be made, and state that the total cost and expenses thereof shall be assessed according to the percentage or calculation hereinbefore mentioned on all benefited property in the district by using the method of assessment contemplated in the notice of intention subject to any variation therefrom as a result of the council’s determining that the benefits to be derived by certain lots or parcels of property warrant such variations. The council may either purchase, acquire or construct the improvements. The council shall appoint an engineer. If the council elects to construct the improvements, the engineer shall have prepared the necessary plans and specifications for the construction work ordered.

Except as hereinafter otherwise provided, the council shall authorize the advertisement for bids therefor by giving notice calling for sealed bids in accordance with the provisions of chapter 28, title 67, Idaho Code.

Any acquisition, purchase or construction contract made by a municipality for any improvements authorized by this code shall be made by the council in the name of the municipality upon such terms of payment as shall be fixed by the council. The contract shall be authorized by resolution empowering the authorized officer of the municipality to execute the contract. The resolution need not set out the contract in full but it shall be sufficient if the resolution refers to a copy of the contract on file in the office of the clerk where it is available for public inspection.

Any provision in this local improvement district code notwithstanding, if any municipality shall elect to exercise the powers herein granted jointly with any other public agency or agencies as authorized by the provisions of [section 67-2328, Idaho Code](#), the improvements as contemplated within the local improvement district may be constructed jointly and as part of a larger project with such other agency or agencies upon the letting of a single contract after compliance with the required bidding procedure for any Idaho public agency jointly participating in the work.

### **History.**

[I.C., § 50-1710](#), as added by 1976, ch. 160, § 2, p. 567; am. 1999, ch. 291, § 8, p. 722; am. 2005, ch. 213, § 20, p. 637.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-1710 was repealed. See Prior Laws, § 50-1701.

### **Compiler's Notes.**

For meaning of words “this code” in third paragraph, see § 50-1701.

## **CASE NOTES**

### **Engineering and Design Expenses.**

Engineering and design expenses incurred prior to the formation of the local improvement district were properly assessed against the property owners. [Simmons v. City of Moscow](#), 111 Idaho 14, 720 P.2d 197 (1986).

**Cited** [Ward v. Ada County Hwy. Dist.](#), 106 Idaho 889, 684 P.2d 291 (1984).

### Decisions Under Prior Law

[Character of bond.](#)

[Competitive bidding.](#)

[Contract to lowest bidder.](#)

[Costs incurred pursuant to invalid contract.](#)



Description.

Discretion of council.

Hearing required.

Inclusion of property.

Nature of improvement and cost estimates.

Second ordinance.

Specifications.

Substantial compliance.

Valid contract.

When costs incurred.

### **Character of Bond.**

Where public improvement contract provided for the giving of a surety company bond, acceptance of private bond did not invalidate contract. *Pease v. City of Payette*, 26 Idaho 793, 147 P. 290 (1915).

### **Competitive Bidding.**

Where specifications called for patented pavement and owner of such patent was not a bidder and had no interest of any kind in any bid, but filed a written statement offering to sell its patent pavement and right thereto at a flat price to any bidder, the principle of competition was retained. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

### **Contract to Lowest Bidder.**

Contract was required to be let to lowest bidder unless good reason existed why higher was best responsible bidder, and such reasons were required to be made of record. *Seysler v. Mowery*, 29 Idaho 412, 160 P. 262 (1916).

### **Costs Incurred Pursuant to Invalid Contract.**

Under former similar section, where improvements were ordered prior to the date a hearing was held, engineering and construction fees added to the work after the hearing date because of the original work were "incurred" prior to the hearing date; accordingly, the city, which was without

jurisdiction to order the original contract, could not assess property owners for any fees arising from completion of that contract. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

### **Description.**

In ordinance ordering improvements and assessment, lots and tracts were required to be described by their subdivisions. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

### **Discretion of Council.**

Court should not set aside action of council under former similar section in absence of proof that such action was arbitrary and without regard to benefits accruing to adjacent property by reason of the improvement. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

### **Hearing Required.**

Under former similar section, a city did not have jurisdiction to order irrigation system improvements prior to the date of hearing, and the mere fact that the orders were not actually signed until after the hearing date did not validate them. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

### **Inclusion of Property.**

Mere inclusion of property in improvement district was not final decision that it was subject to improvement. *Bell v. City of Moscow*, 48 Idaho 65, 279 P. 1095 (1929).

### **Nature of Improvement and Cost Estimates.**

Former sections governing resolutions of intention and ordinances contemplated that the general nature of the proposed improvements and the estimated costs be known prior to creation of a local improvement district; they did not provide that the actual improvements and costs should already have been decided since such a reading would negate the very purpose of the elaborate provisions for public input. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

### **Second Ordinance.**

After ordinance of intention had been enacted, stating the intention of city, the city council should have passed ordinance establishing improvement district, and, in later ordinance, general character of proposed improvement should have been stated and the more specific character of proposed improvement have been given. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

### **Specifications.**

Power was vested in council to determine character and kind of materials to be used in proposed improvement. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Specifications were required to be sufficiently definite to enable strict enforcement of terms against successful bidder. *Seysler v. Mowery*, 29 Idaho 412, 160 P. 262 (1916).

### **Substantial Compliance.**

Former section governing contracts for improvements was substantially complied with by council passing and mayor approving an ordinance providing for contract and authorizing its execution and prescribing terms and conditions thereof. *Clyde v. City of Moscow*, 23 Idaho 592, 131 P. 381 (1913).

### **Valid Contract.**

Provisions in street improvement contract holding contractor responsible for defects and damages were held not to make the contract invalid. *Pease v. City of Payette*, 26 Idaho 793, 147 P. 290 (1915).

### **When Costs Incurred.**

Where change orders for the installation of an irrigation system were authorized by a city prior to the date on which the hearing required by former similar section was held, the costs were "incurred" for purposes of determining whether the city had jurisdiction to assess property owners for improvements, even though the city had not actually expended the moneys. *Butler v. City of Blackfoot*, 102 Idaho 608, 635 P.2d 1231 (1981).

**§ 50-1711. Limitation on assessments against property.** — No municipality shall order any improvement to be paid for by local assessment where the estimated costs of such improvement, if such costs are to be assessed to the property in the district, or that portion of the estimated costs to be assessed, if a portion only of said total costs are to be assessed, when added to all other outstanding and unpaid local improvement assessments against the property included in the district, excluding penalties and interest, shall exceed the actual value of the real property, including the value of the improvements thereon.

The council shall provide, by ordinance, the method of determining the actual value of the real property including the improvements thereon in the district and when the valuation is so determined, such valuation shall be final and conclusive in the absence of fraud or gross mistake.

**History.**

I.C., § 50-1711, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1711 was repealed. See Prior Laws, § 50-1701.

**§ 50-1712. Preparation of assessment roll and notice of hearing thereon.** — After the contract has been awarded and at such time as the council shall determine, the engineer shall prepare a duly certified report to the council showing in detail the total cost and expenses of the improvements and the dollar amounts of the same payable from assessments and from other sources. The report shall also contain a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of property assessed, and showing the amount chargeable to each lot or parcel of property according to the method of assessment originally contemplated by the council subject to any variations therefrom as a result of the engineer's recommendation that benefits to be received by any lot or parcel of property warrant such a variation from the method chosen. Each lot or parcel of property shall be described with sufficient clearness to identify it, and if the engineer recommends any variations from the contemplated method of assessment, those variations shall be pointed out and the reasons for the same shall be given in the report. No assessment for water or sewer purposes shall be levied against any property of any public utility unless the latter shall agree to the same by filing a written consent in the office of the clerk of the municipality; and in the event that a local improvement district constructs water and sewer improvements as well as other improvements the engineer shall assess public utilities only for the amount of the total cost and expenses which the engineer finds to be attributable to such other improvements if no such consent has been given.

Upon receipt of the report, the council shall cause the assessment roll contained therein to be filed in the office of the clerk where it shall be available for public inspection. The council shall thereupon fix a time and place when and where the council will meet in open session and consider the report and the assessment roll and hear all objections to the assessment roll by the property owners of the district.

### **History.**

I.C., § 50-1712, as added by 1976, ch. 160, § 2, p. 567.

## STATUTORY NOTES

### Prior Laws.

Former § 50-1712 was repealed. See Prior Laws, § 50-1701.

## CASE NOTES

**Cited** Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984).

### Decisions Under Prior Law

“Abutting on” and “contiguous”.

Basis of assessment.

Jurisdictional requirements.

Municipal property.

Obligation of indebtedness.

Owner not known and property not described.

Presumption of compliance.

Presumption of knowledge of city’s powers.

Public records.

Quiet title action.

Reassessments to cover deficiency.

Reconstruction of system.

### “Abutting on” and “Contiguous”.

Terms “abutting on” and “contiguous” were synonymous, both conveying idea that lot borders on improvement. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

Franchise, roadbed, tracks and like property of street railroads in pavement improvement district were taxable as “abutting, contiguous, tributary or included lands” in proportion to benefits accruing from the

improvement. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

### **Basis of Assessment.**

It was both just and equitable that special assessments within a sewer district be imposed upon the land itself and not upon the improvements thereon. *McGilvery v. City of Lewiston*, 13 Idaho 338, 90 P. 348 (1907).

Assessment should be made with reference to the frontage of lots and lands and benefits to be derived to the abutting property by reason of sewer improvement; the number of fronting feet of lots and lands was not sole controlling fact for consideration in levy of a special assessment. *Blackwell v. Village of Coeur d'Alene*, 13 Idaho 357, 90 P. 353 (1907).

Paving assessments based on frontage were not invalid because of differences in value and depth of various properties assessed. *Noble Estate v. City of Boise City*, 19 F.2d 927 (D. Idaho 1927).

The measure of assessments of property of a drainage district was that of benefits received. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

### **Jurisdictional Requirements.**

Under constitutional requirement of due process, requirement of statute that assessment roll name the owner of property assessed if known, and/or describe property if owner unknown was jurisdictional and did not relate to mere irregularities in assessment proceeding, and hence a statutory provision for appeal within five days as exclusive means of attack on assessment would not bar suit attacking assessment for failure to comply with such provision. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

### **Municipal Property.**

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

### **Obligation of Indebtedness.**

Indebtedness created under former sections governing sewer construction was against property in the district and was not an obligation of the city or

village. *Broad v. City of Moscow*, 15 Idaho 606, 99 P. 101 (1908).

### **Owner Not Known and Property Not Described.**

Local improvement district assessment roll, made pursuant to ordinance requiring description of assessed property, purporting to assess property in the name of contract vendee by description merely referring to tax list in which property was misdescribed, was insufficient on which to base delinquency certificates, and deed to holder thereof, especially in absence of a showing by whom tax list was made or authorized and purpose thereof. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

### **Presumption of Compliance.**

It would be presumed, in absence of evidence to contrary, that official acts connected with assessment were performed in substantial compliance with statute. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

### **Presumption of Knowledge of City's Powers.**

Knowledge of statute providing that all improvements made within paving improvement district, especially benefiting city property therein, should be payable out of general fund would be imputed to purchasers of improvement district bonds, since all persons were presumed to know extent of city's powers to levy assessments against property in improvement district. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

### **Public Records.**

Local improvement district assessment roll was public record to which property owners were entitled to look for information as to whether their property had been assessed. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

### **Quiet Title Action.**

In a suit to quiet title and recover possession of realty as against a grantee of an invalid deed, issued to purchaser of delinquency certificate for amount of invalid improvement assessments, amount paid by grantee for delinquency certificate, deed, recording fee, and taxes on and improvement of property was required to be deducted from the amount due owners by grantee as rental for use and occupation of the premises. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).



### **Reassessments to Cover Deficiency.**

Under statute providing for assessment of lands in improvement district in proportion to number of feet fronting thereon, or included therein, and in proportion to the benefits received, private property within paving improvement district could not be reassessed to make up deficiency for failure of street railroads to pay balance due under lawful assessments against their property. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

### **Reconstruction of System.**

After the property of a city had once been assessed for a sewerage system, the same property could be again assessed for the purpose of building a new system where the old one had become inadequate. *Veatch v. Gibson*, 29 Idaho 609, 160 P. 1112 (1916).

**§ 50-1713. Notice of hearing on assessment roll.** — After the council fixes the time and place for said hearing on the assessment roll, the clerk of the municipality shall give notice by publication in the official newspaper of such municipality in three (3) successive issues if published in a daily newspaper, or by publication in two (2) issues if published in a weekly newspaper, the first of which publication shall be at least fifteen (15) days before the date fixed for hearing objections to said assessment roll, that such assessment roll is on file in his office. The notice shall further state the date, time and place at which the council will hear and consider objections to the assessment roll by the parties aggrieved by such assessments. The clerk shall, not less than fifteen (15) days before the date fixed for hearing objections to said assessment roll, mail a substantially similar notice to each owner of property if known, or his agent if known, within the limits of the improvement district, addressed to such person at his post office address if known, or if unknown, to the post office in such municipality where the improvement is to be made. The mailed notice shall also state the amount of the individual assessment and that at the specified time and place the council will hold a hearing to hear and determine all objections to the regularity of the proceedings in making such assessment, the correctness of the assessment, and the amount levied on the particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvements in the project. It shall further state that each owner of property within the district is given notice that in revising the assessment roll at or after the hearing, the council may increase any assessment or assessments up to twenty per cent (20%) of the original amount thereof without giving further notice and holding a new hearing thereon. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, before the date and time fixed for the hearing, file with the clerk his objections in writing to said assessment.

### **History.**

I.C., § 50-1713, as added by 1976, ch. 160, § 2, p. 567.

### **STATUTORY NOTES**

**Prior Laws.**

Former § 50-1713 was repealed. See Prior Laws, § 50-1701.

**CASE NOTES**

**Cited** Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984); Simmons v. City of Moscow, 111 Idaho 14, 720 P.2d 197 (1986).

**§ 50-1714. Hearing objections to assessment roll and confirmation. —**

At the time appointed for hearing objections to such assessment roll, the council shall consider the engineer's report and the assessment roll and shall hear and determine all objections which have been filed by any party interested to the regularity of the proceedings in making such assessment, to the correctness of such assessment, to the amount levied on any particular lot or parcel of land, including the benefits accruing thereon and the proper proportionate share of the total cost of the improvements to be borne thereby and to the inclusion of any lot or parcel of land in the proposed district. The council shall have the power (a) to adjourn such hearing from time to time and, in its discretion, to revise, correct, conform or set aside any assessment and to order that such assessment be made de novo, and (b) to exclude any lot or parcel of land from an assessment roll which, in the judgment of the council, it finds will not be benefited by improvements to be made. If any assessments are increased in an amount greater than twenty per cent (20%) of the amount of the assessments as set out in the notice of the hearing, then a new notice of the hearing shall be given and a new hearing held as aforesaid. No new hearing shall be required in the event that any assessments are decreased in any amount or are increased in an amount up to twenty per cent (20%) of the original amount.

**History.**

I.C., § 50-1714, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1714 was repealed. See Prior Laws, § 50-1701.

**CASE NOTES**

**Cited** Ward v. Ada County Hwy. Dist., 106 Idaho 889, 684 P.2d 291 (1984); Simmons v. City of Moscow, 111 Idaho 14, 720 P.2d 197 (1986).

**§ 50-1715. Confirmation of assessment roll.** — (1) After said hearing, the council shall pass an ordinance confirming the assessment roll as corrected by the council in relation to the benefits accruing thereon as a result of the improvements being made. The ordinance shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each lot or parcel of land, which ordinance shall contain a finding that each lot or parcel of land is benefited to the amount of assessment levied thereon subject to appeal as provided herein. Upon passage of the ordinance, the clerk shall certify and file the confirmed assessment roll with the treasurer of the municipality and the assessments therein shall be due and payable to the treasurer within thirty (30) days from the date of the adoption of the ordinance. The confirmed assessment roll and the assessments made by the confirmed assessment roll shall be a lien upon the property assessed from and after the date the following notice is recorded. Immediately upon passage of the confirming ordinance, the clerk shall file with the county recorder a notice which shall contain the date of the confirming ordinance and a description of the area or boundaries of the district. If any assessment is not paid in full within said thirty (30) day period, such assessment shall become delinquent and shall be collected in the same manner and with the same penalties and interest added thereto as hereinafter provided for delinquent assessments. The council may, in the alternative, determine to make assessments unpaid at the end of said thirty (30) day period payable in installments and to issue and sell registered warrants or installment bonds payable from such unpaid installments as herein provided. If the council chooses to do so, it shall provide in said ordinance that any property owner who has not paid his assessment in full within said thirty (30) day period will be conclusively presumed to have chosen to pay the same in installments, and the ordinance shall then establish the number of years said installments shall run, the dates of payment of the same, and the rate of interest that the unpaid assessments shall bear, which rate shall not be less than the rate of interest borne by the warrants or bonds payable therefrom, said interest running from the date of the passage of the assessment ordinance, irrespective of the date of its official publication, and being payable at the same time and place as the

installment payments of assessments. Said installments shall be due and payable in not to exceed thirty (30) years to the treasurer or other proper officer as provided by the council. The ordinance shall establish the due date of the first installment payment and that the local or special assessments may be carried on the rolls of the municipality and collected as hereinafter provided. If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the treasurer shall add a penalty of two percent (2%) thereto. In addition to any other method of collection provided in this code, the council may certify delinquent installments to the tax collector, and when so certified they shall be extended on the tax rolls and collected as are property taxes, pursuant to the provisions of chapter 10, title 63, Idaho Code. In the event that any property owner should choose to pay his assessment in full after such time as it has been conclusively presumed that he will pay in installments, such payment in full shall include the full amount of the unpaid assessment plus penalties and all interest payable on the same plus additional interest thereon at the rate provided in the bonds from the date of the last installment due to one (1) year after the next interest date of said bonds.

(2) Any errors in description, ownership of property, or amounts in any assessment ordinance adopted pursuant to this section may be corrected by the passage of an amendatory ordinance, which need set forth only the corrected descriptions or amounts. The passage of such amendatory ordinance shall serve only to postpone the thirty (30) day period for payment in full of the assessments actually affected by such amendatory ordinance, and the due dates of installments of such affected assessments shall be the same as the due dates of installments not affected. Notice of any assessments so affected shall be given in the same manner as hereinafter provided for the giving of notice of assessments.

### **History.**

**I.C., § 50-1715**, as added by 1976, ch. 160, § 2, p. 567; am. 1983, ch. 41, § 1, p. 98; am. 2020, ch. 273, § 2, p. 805.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-1715 was repealed. See Prior Laws, § 50-1701.

## **Amendments.**

The 2020 amendment, by ch. 273, added the subsection designators to the existing text; and, in subsection (1), and inserted “pursuant to the provisions of chapter 10, title 63, Idaho Code” at the end of the next-to-last sentence.

## **Legislative Intent.**

Section 1 of S.L. 2020, ch. 273 provided: “Legislative Intent. It is the intent of the Legislature to clarify and confirm the scope and effect of Idaho’s statutes relating to the treatment of delinquent local improvement district assessments certified to the tax collector for collection. [Section 50-1715, Idaho Code](#), permits, as an alternative method of collection to the issuance of delinquent certificates under the Local Improvement District Code, the certification of delinquent assessment installments to the tax collector. Once certified, said assessments are to be extended on the tax rolls and collected as are property taxes. Collection of delinquent property taxes is governed by the provisions of chapter 10, title 63, Idaho Code. By this legislation, the Idaho Legislature seeks to clarify any ambiguity that may exist regarding the treatment and interpretation of delinquent assessments certified to the tax collector pursuant to [section 50-1715, Idaho Code](#), and to confirm the interplay between the Local Improvement District Code and the property tax statutes with respect to any such assessments so certified. It is and has always been the intent of the Legislature that delinquent local improvement district assessments certified to the tax collector for collection be governed by the collection provisions of chapter 10, title 63, Idaho Code, and not the collection provisions of the Local Improvement District Code. As context should have made evident, said delinquent assessments are to be treated in the same manner and to the same effect as delinquent property taxes, including with respect to collection, satisfaction, and extinguishment thereof. The purpose of [section 63-1009, Idaho Code](#), has always been to convey title absolutely free and clear of liens and mortgages of a monetary nature; including, specifically, delinquent local improvement district assessments certified to the tax collector for collection pursuant to [section 50-1715, Idaho Code](#). As with property taxes, a tax deed conveys title to the grantee free and clear of all certified delinquent local improvement district assessments for which the lien is foreclosed and in satisfaction of which the property is sold. It was

never the intent of the Legislature for such certified local improvement district assessment amounts to survive the issuance of a tax deed in a manner inconsistent with the treatment of property taxes. Sections 50-1721 and 63-1009, Idaho Code, are being amended to clarify and confirm this intent.”

### **Compiler’s Notes.**

For meaning of words “this code” see § 50-1701.

### **Effective Dates.**

Section 5 of S.L. 2020, ch. 273 declared an emergency. Approved March 24, 2020.

## **CASE NOTES**

**Cited** *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

### **Decisions Under Prior Law**

City clerk authorized to collect tax.

City liable for failure to collect assessments.

Contracts.

Discharge of individual property.

Embezzlement by clerk.

Improvement tax funds.

Interest.

Prerequisites to confirmation.

Sufficiency of order.

### **City Clerk Authorized to Collect Tax.**

A clerk of a city had statutory authority to receive and receipt for local improvement assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **City Liable for Failure to Collect Assessments.**



Under a former statute providing that a municipality should not be liable on local improvement bonds, except for the collection of the special assessment made for the improvement, a city was liable for the bona fide collection of the assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Contracts.**

Contractor took his chances on proceeding to construct sewers prior to confirmation of assessment, but when council confirmed assessment, such contract was in full force and effect. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

### **Discharge of Individual Property.**

Payment of special improvement district's assessment against a particular individual and property discharged such property from further liability on the district bonds. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **Embezzlement by Clerk.**

A city which permitted its clerk to collect local improvement assessments, which were properly paid in part to bondholders by the city treasurer, could not allege illegality of collection by clerk, rather than by county tax collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk's embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Improvement Tax Funds.**

Funds collected by city through its clerk, by means of improvement district assessments, were "trust funds," pledged exclusively to the payment of the bonds issued against the special assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Interest.**

Person who desired to redeem his property, or clear it of the lien created by issuance of local improvement bonds, could do so by paying assessment against his property in full with rate of interest which the bond draws, until

the bond becomes due. *Veatch v. City of Moscow*, 24 Idaho 461, 134 P. 551 (1913).

### **Prerequisites to Confirmation.**

It was not indispensable, before sewer assessment could be confirmed, that ordinance of intention shall have contained a detailed statement of plans and specifications of the work and of the material of which the system was to be constructed. *Dement v. City of Caldwell*, 22 Idaho 62, 125 P. 200 (1912).

### **Sufficiency of Order.**

Any order or action of council which disclosed their approval was sufficient. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

**§ 50-1716. Notice and payment of assessments.** — Upon passage of the assessment roll, the treasurer of the municipality shall mail a postcard or letter to each property owner assessed at his post office address if known, or if unknown, to the post office in the municipality where the improvement is being made, stating the total amount of his assessment, plus the substance of the terms of payments of the same as set out in the ordinance confirming the assessment roll.

An affidavit of the mailing of the notice shall be filed, before the date of delinquency, in the office of the treasurer in the file of the improvement district, but the failure of the treasurer to give any notice required by this section or to do any other act or thing required by this section, shall not affect the validity of the assessments or installments thereof due nor extend the time for payment, but shall subject the municipality to liability to a taxpayer for any damage sustained by the latter by reason of such failure.

**History.**

I.C., § 50-1716, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1716 was repealed. See Prior Laws, § 50-1701.

**§ 50-1717. Installment docket.** — Whenever any improvement bonds or warrants are issued as herein provided, the treasurer shall immediately thereafter mark on the assessment roll of such local improvement district opposite each assessment which has been paid, the word “paid” together with the date of payment, and shall immediately thereafter enter in a docket to be kept for that purpose, known as “local improvement installment docket” under separate heads for each improvement district, all unpaid assessments as shown on such assessment roll, said docket to be made up from the assessment roll, and shall contain in separate columns the number of the assessment, the name of the owner, the description of the property, the amount of the total assessment, the amount and date when due of each annual installment with interest added, and a blank column in which shall be marked the date of payment of each installment. Such docket shall stand thereafter as a lien docket for such assessments so shown until paid.

**History.**

I.C., § 50-1717, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1717 was repealed. See Prior Laws, § 50-1701.

**§ 50-1718. Appeal procedure — Exclusive remedy.** — Any person who has filed objections to the assessment roll or any other person who feels aggrieved by the decision of the council in confirming the same shall have the right to appeal to the district court of the county in which the municipality may be situated. Such appeal shall be made within thirty (30) days from the date of publication of the ordinance confirming the assessment roll by filing a written notice of appeal with the clerk of the municipality and with the clerk of the district court aforesaid describing the property and objections of the appellant. The appellant shall also provide a bond to the municipality in a sum to be fixed by the court, but not less than two hundred dollars (\$200) with sureties to be approved by the court, conditioned to pay all costs to be awarded to the respondent upon such an appeal. After said thirty (30) day appeal period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said assessments for any reason whatsoever and, thereafter, said assessments and the liens thereon shall be considered valid and incontestable without limitation.

If an appeal is filed within said period, the case shall be docketed by the clerk of said court in the name of the person taking the appeal against the municipality as “an appeal from assessments.” Said cause shall then be at issue and have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant, from which judgment an appeal may be taken to the Supreme Court as provided by law. In case the assessment is confirmed, the fees of the clerk of the municipality for copies of the record shall be taxed against the appellant with other costs.

### **History.**

I.C., § 50-1718, as added by 1976, ch. 160, § 2, p. 567.

## STATUTORY NOTES

### **Prior Laws.**

Former § 50-1718 was repealed. See Prior Laws, § 50-1701.

## CASE NOTES

Attorney fees.

Consideration of benefits to property.

### **Attorney Fees.**

The “exclusive remedy” in this section goes to the appeal of any council decision to the district court. This section does not bar the award of attorney’s fees pursuant to § 12-117. *Hoffman v. Bd. of Local Improvement Dist. No. 1101*, 163 Idaho 464, 415 P.3d 332 (2016).

### **Consideration of Benefits to Property.**

The district court, sitting in equity on an appeal from an assessment by a local improvement district, did not err in finding that the benefits conferred on the plaintiff’s property by the construction of the street project were equal to or in excess of the amount of the assessment against the plaintiff’s property; thus, the district court did not err in exercising its equitable powers in declining to revise or reduce the assessment against the plaintiff’s property by considering the possible future benefits which the project might confer upon another landowner’s property. *Ward v. Ada County Hwy. Dist.*, 106 Idaho 889, 684 P.2d 291 (1984).

## Decisions Under Prior Law

Evidence.

Jurisdiction.

Trial de novo.

### **Evidence.**

Under former section governing trial of appeals there was implied power to admit relevant and competent evidence, and evidence as to benefit of various lots was admissible on same principle as opinion evidence of value

in ordinary cases. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

### **Jurisdiction.**

Former section governing trial of appeal limited power of court to confirming, modifying or annulling assessment insofar as it affected property of appellant and it had no jurisdiction to pass upon rights of other property owners. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

Under constitutional requirement of due process, requirement of statute that assessment roll name the owner of property assessed, if known, and describe property if owner unknown was jurisdictional and did not relate to mere irregularities in assessment proceeding, and hence a statutory provision for appeal within five (now thirty) days as exclusive means of attack on assessment would not bar suit attacking assessment for failure to comply with such provision. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

### **Trial De Novo.**

Language of former section governing trial of appeal clearly implied trial de novo, with power on part of court to modify assessment as seemed right. *Amsbary v. City of Twin Falls*, 34 Idaho 313, 200 P. 723 (1921).

**§ 50-1719. Additional improvements.** — Whenever any assessment is levied on any property for further, separate or additional improvement under the provisions of this code or any law of this state, such assessment shall be a subsequent lien upon the property so assessed to the lien of the unpaid assessments theretofore made for the original improvement. Whenever any assessment is made for such further, separate or additional improvement on property on which an existing assessment has been levied for improvements, such further, separate or additional assessment for improvement shall not be construed or considered as for one and the same improvement, or for the same purpose or for the same benefit, or as a double assessment for improvements against the property being assessed for the payment of the cost and expense of such improvement but shall be considered and construed as a separate, distinct, single and independent improvement on and of benefit to the property so assessed. All assessments so levied or bonds or warrants issued payable from the same shall be considered and construed as assessments levied or bonds or warrants issued for separate, distinct, single and independent improvements and benefits on and to the property so assessed.

**History.**

I.C., § 50-1719, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1719 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words “this code” see § 50-1701.



**§ 50-1720. Reassessment of benefits.** — In all cases of assessments for local improvements of any kind against any property wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the charter provisions, or laws governing such assessments, the council shall be and is hereby authorized to reassess such assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment is made. No mistake in description of the property or the name of the owner thereof shall affect the validity of any assessment or any lien created thereby under the provisions of this code, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake, or inadvertence, the amount assessed on any property is insufficient to pay the cost and expenses of the improvement made and enjoyed by the owner of such property, it shall be lawful, and the council is hereby directed and authorized, to make reassessments on said property sufficient in amount to pay for such improvements, the reassessment to be made and collected in accordance with the provisions of law existing at the time of its levy.

**History.**

I.C., § 50-1720, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1720 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words “this code,” see § 50-1701.

**CASE NOTES**

[In general.](#)

Jurisdictional defects.

### **In General.**

When a trial court properly decreases some, but not all, assessments, this section requires the matter then be referred back to the city council for reassessment of all benefited properties within the district so the deficiency can be made up. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

### **Jurisdictional Defects.**

Since the legislature did not intend to correct jurisdictional defects under the reassessment statute, where a municipality originally lacked statutory jurisdiction to incur expenditures because it had not complied with the applicable statutory provisions, it could not later acquire jurisdiction to incur those costs by complying with the statutory procedures after the costs had been incurred. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

#### Decisions Under Prior Law

Basis.

Defeating right of reassessment as not taking property.

Bondholders compelling reassessment.

Bondholders entitled to unpaid interest.

Good faith of city pledged.

Mandamus compelling reassessment.

Mistake requiring reassessments.

Municipal property not subject to special assessments.

Property owners charged with notice of mistake.

Reassessment for deficiency.

Reassessment ineffective against u.s. government.

**Basis.**

Where reassessment was attempted to be made, it was required to be based upon some reason assigned in statute and in conformity therewith. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

### **Defeating Right of Reassessment as Not Taking Property.**

The fact that the purchase by the United States of property, which was subject to reassessment by a city to make up a deficiency for the payment of outstanding local improvement bonds, had the effect of frustrating the attempt to make such reassessment did not amount to the taking of the bondholders' property. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

### **Bondholders Compelling Reassessment.**

Where, through fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, a cause of action by a holder of the bonds to compel reassessment of the property in the district to make up the deficiency did not accrue until actual notice of deficiency existing when bonds were sold. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Where, through the fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, the bondholders' only adequate relief was to have the property in the district, exclusive of lots sold for general taxes, reassessed for the payment of the deficit with interest from the date of the maturity of the bonds. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Bondholders Entitled to Unpaid Interest.**

Where a city council made no annual levies during the life of special or local improvement bonds, bondholders were entitled to unpaid interest. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Good Faith of City Pledged.**

Ordinance authorizing issuance of special or local improvement bonds pledged good faith of city in carrying out its duties in connection with the district, and that all steps had been properly taken including a valid and sufficient assessment roll. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Mandamus Compelling Reassessment.**

Bondholders were entitled to mandamus requiring reassessment to take care of the inadequacy of assessment roll and failure to make annual levies for the payment of interest. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

Where mandamus to compel reassessment of property within a special or local improvement district was brought some eighteen months after actual notice of the deficiency through the city clerk's fault, the action was not barred by limitation. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Mistake Requiring Reassessments.**

Where, through the fault of the city clerk, the assessment roll standing as security for the payment of special or local improvement district bonds was inadequate, there existed a mistake within former similar section requiring reassessments. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Municipal Property Not Subject to Special Assessments.**

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

### **Property Owners Charged With Notice of Mistake.**

The property owners in a special or local improvement district were chargeable equally with bondholders with notice of the law, that in the event of mistake or inadvertence, reassessment may ensue, and with the duty of seeing that the law was complied with. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

### **Reassessment for Deficiency.**

Under a statute providing assessment of lands in improvement districts in proportion to the number of feet fronting thereon, or included therein, and in proportion to benefits received and for payment by cities from the general fund of fair and equitable proportion of cost of improvements for benefit of city property in district, private property in improvement district could not be reassessed to make up deficiency resulting from void

assessment of city property in district. *Reynard v. City of Caldwell*, 55 Idaho 342, 42 P.2d 292 (1935).

### **Reassessment Ineffective Against U.S. Government.**

A reassessment made by a city under former similar section for the amount of the deficiency of the original assessment to pay bonds, issued to finance a local improvement, was a nullity as to property to which the United States had acquired title, although the government agents learned while they were acquiring the land that the original assessments were insufficient to pay the bonds. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

**§ 50-1721. Lien of assessment — Foreclosure.** — (1) Assessments levied to pay the cost and expense of any improvement authorized by the provisions of this code, or any law of this state, shall constitute a lien upon and against the property upon which such assessment or assessments are made and levied from and after the date upon which the ordinance levying such assessment or assessments is passed, which lien shall be superior to the lien of any mortgage or other encumbrance, whether prior in time or not, and shall constitute such lien until paid, and until paid, such lien shall not, except as otherwise provided in this section, be subject to extinguishment, including but not limited to extinguishment by reason of the sale of the property assessed on account of the nonpayment of general taxes or the conveyance of such property by any means to the United States of America, or any agency thereof, the state of Idaho, or any county, city, school district, community college district, or other public body, agency or taxing unit in said state. When bonds have not been issued and said assessments made payable in installments as herein provided, such assessments shall be collected, or the property therein shall be foreclosed and sold for such assessments and costs, in a suit for that purpose by the municipality. Delinquent assessments certified to the tax collector for collection as provided in section 50-1715, Idaho Code, shall be governed by the provisions of chapter 10, title 63, Idaho Code. All provisions of chapter 10, title 63, Idaho Code, specifically including those governing collection, satisfaction, and extinguishment of delinquent amounts, shall apply to certified delinquent assessments in the same manner and to the same effect as delinquent property taxes.

(2) Such suit shall be in the name of the municipality as plaintiff and against any one (1) or more owners of property failing to pay such assessment or assessments as defendants. In any such proceedings where the court trying the same shall be satisfied that the improvements have been made or have been contracted for, which according to the true intent of this code would be properly chargeable to such property, a recovery shall be permitted and the lien enforced to the extent of the cost and expenses of the improvement which would be chargeable on such property notwithstanding any informality, irregularity or defect in any of the proceedings of such

municipality or any of its officers, and such property shall be ordered sold for the payment of the assessment or assessments against it and the costs and expenses of such suit, including reasonable attorney's fees, to be fixed by the court and prorated to each separate piece of property.

**History.**

I.C., § 50-1721, as added by 1976, ch. 160, § 2, p. 567; am. 2020, ch. 273, § 3, p. 805.

**STATUTORY NOTES**

**Cross References.**

Effect of tax deed as conveyance, § 63-1009.

Sale of county property, § 31-808.

**Prior Laws.**

Former § 50-1721 was repealed. See Prior Laws, § 50-1701.

**Amendments.**

The 2020 amendment, by ch. 273, added the subsection designators to the existing text and, in subsection (1), in the first sentence, substituted “shall not, except as otherwise provided in this section, be subject to extinguishment, including but not limited to extinguishment by reason of the sale” for “shall not be subject to extinguishment for any reason whatsoever, including but to limited to the sale” near the middle and substituted “community college district” for “junior college district” near the end, and added the last two sentences.

**Legislative Intent.**

Section 1 of S.L. 2020, ch. 273 provided: “Legislative Intent. It is the intent of the Legislature to clarify and confirm the scope and effect of Idaho’s statutes relating to the treatment of delinquent local improvement district assessments certified to the tax collector for collection. [Section 50-1715, Idaho Code](#), permits, as an alternative method of collection to the issuance of delinquent certificates under the Local Improvement District Code, the certification of delinquent assessment installments to the tax collector. Once certified, said assessments are to be extended on the tax

rolls and collected as are property taxes. Collection of delinquent property taxes is governed by the provisions of chapter 10, title 63, Idaho Code. By this legislation, the Idaho Legislature seeks to clarify any ambiguity that may exist regarding the treatment and interpretation of delinquent assessments certified to the tax collector pursuant to [section 50-1715, Idaho Code](#), and to confirm the interplay between the Local Improvement District Code and the property tax statutes with respect to any such assessments so certified. It is and has always been the intent of the Legislature that delinquent local improvement district assessments certified to the tax collector for collection be governed by the collection provisions of chapter 10, title 63, Idaho Code, and not the collection provisions of the Local Improvement District Code. As context should have made evident, said delinquent assessments are to be treated in the same manner and to the same effect as delinquent property taxes, including with respect to collection, satisfaction, and extinguishment thereof. The purpose of [section 63-1009, Idaho Code](#), has always been to convey title absolutely free and clear of liens and mortgages of a monetary nature; including, specifically, delinquent local improvement district assessments certified to the tax collector for collection pursuant to [section 50-1715, Idaho Code](#). As with property taxes, a tax deed conveys title to the grantee free and clear of all certified delinquent local improvement district assessments for which the lien is foreclosed and in satisfaction of which the property is sold. It was never the intent of the Legislature for such certified local improvement district assessment amounts to survive the issuance of a tax deed in a manner inconsistent with the treatment of property taxes. Sections 50-1721 and 63-1009, Idaho Code, are being amended to clarify and confirm this intent.”

### **Compiler’s Notes.**

For meaning of words “this code,” see § 50-1701.

### **Effective Dates.**

Section 5 of S.L. 2020, ch. 273 declared an emergency. Approved March 24, 2020.

## **CASE NOTES**

Decisions Under Prior Law



Failure to copy statute into bond.

Liens.

Numerical order payment.

Parties.

Priority.

Remedies of bondholders.

### **Failure to Copy Statute Into Bond.**

Failure to copy former section governing bondholder's rights into the bond did not eliminate it. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

### **Liens.**

Liens for local improvements were not discharged by tax sale where they attached after assessment for taxes on account of which property was sold. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

All parties were chargeable with knowledge of law to the effect that, when former chapter governing improvement districts had been complied with, the lien of the bonds upon lands of an improvement district became fixed and paramount to any other lien excepting those of general state, county and city taxes. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

### **Numerical Order Payment.**

Holders of improvement district bonds could not complain of payment by a city, under directory statute, of certain bonds in their numerical order before maturity when no objections were made until years after such payment had been made and the fund was insufficient to pay all bonds in full. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

### **Parties.**

Purchasers of bond sold by city pending action to restrain levy of assessment need not be made parties before judgment could be rendered restraining collection of assessments for payment of bonds. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

Where suit was instituted by taxpayer before bonds were sold or delivered, city could not defeat right of action by transferring such bonds and contending that bondholders were not parties to action. [Lucas v. City of Nampa, 41 Idaho 35, 238 P. 288 \(1925\).](#)

### **Priority.**

Special assessments did not have priority over general taxes. [Bosworth v. Anderson, 47 Idaho 697, 280 P. 227 \(1929\).](#)

### **Remedies of Bondholders.**

In case municipal authorities failed or neglected to collect sewer district assessment or property owner refused or neglected to pay same, the warrant or bondholder could compel municipal authorities to act by writ of mandate, or could proceed in the ordinary way, to foreclose his lien through the district court in the same manner as he would foreclose any other mortgage or lien. [Blackwell v. Village of Coeur d'Alene, 13 Idaho 357, 90 P. 353 \(1907\).](#)

Bondholder could have no claim against city on account of debt created by bond and was given no right as against taxpayer who had paid all his assessments. [New First Nat'l Bank v. City of Weiser, 30 Idaho 15, 166 P. 213 \(1916\).](#)

If bondholder proceeded in manner provided by law he could either secure his money from delinquent taxpayer or obtain title to property of such delinquent free of all encumbrances. The remedy of bondholder was not against city nor improvement district nor person who had paid the sum due from him but against property of delinquent. [New First Nat'l Bank v. City of Weiser, 30 Idaho 15, 166 P. 213 \(1916\).](#)

The holder of local improvement bonds was not entitled to a mandamus to compel a city to apply unused proceeds of general obligation bonds for payment of assessments against the city's property, where the city never fixed any amount to be paid from general funds for improvements, and the item never was included within the budget or appropriation bill. [Reynard v. City of Caldwell, 53 Idaho 62, 21 P.2d 527 \(1933\).](#)

If a city neglected to levy assessments and pursue the usual and ordinary methods provided by statute for the collection thereof, holders of improvement district bonds could compel it to do so by a mandate, and if

the city neglected to collect the assessments after levy, and the property owners became delinquent in payment of their installments, the bondholders could foreclose their lien through the courts. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

**§ 50-1721A. Segregation of assessments.** — Whenever any land against which there has been levied any special assessment by any municipality shall have been sold in part or subdivided, the council of that municipality shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the municipality which levied the assessment. If the council determines that a segregation should be made, it shall by ordinance order the clerk to make segregation on the original assessment roll as directed in the ordinance. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The ordinance shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the ordinance shall be filed with the county recorder. The council may require, as a condition to the order of segregation, that the person seeking it pay the municipality the reasonable engineering and clerical costs incident to making the segregation. No segregation need be made if the council shall find that by such segregation the security of the lien for such assessment will be so jeopardized as to reduce the security for any outstanding local improvement district obligations payable from such assessment.

**History.**

I.C., § 50-1721A, as added by 1987, ch. 126, § 1, p. 256.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1987, ch. 126 declared an emergency. Approved March 27, 1987.

**§ 50-1722. Bonds — Registered warrants — Interim warrants.** — If the council determines to make assessments payable in installments as is provided in section 50-1715, Idaho Code, it shall be [by] ordinance issued [issue] in the name of the municipality improvement bonds of the improvement district payable from assessments levied against the property within the district. Such bonds shall be payable each year from and after the date of the bonds and shall be of such denomination and bear interest, payable annually, at such rate as is determined by the council, but in no event shall such rate of interest be greater than the rate of interest borne by the unpaid assessments.

The bonds shall be in such form and denomination as may be provided by the council and they shall mature serially over a period not exceeding thirty (30) years. The council may reserve the right to redeem any of the bonds at its option on any interest payment at such price or prices as determined by the council. The bonds shall be signed by the mayor of the city, the chairman of the board of county commissioners, the president of the highway district, or the chairman of the board of directors of a water and/or sewer district, as the case may be, and shall be countersigned by the treasurer and attested by the clerk of the municipality. No bond or coupon shall be invalid because an officer whose manual or facsimile signature thereon has ceased to hold office at the time of the delivery of the bonds so long as he held the office at the time such signature was placed on the bond or coupon. The coupons attached thereto shall bear the facsimile signatures of said officers and each bond shall have the seal of the municipality affixed thereto. Each bond shall provide that the principal thereof and the interest thereon are payable solely from the principal of an [and] interest on the unpaid assessments levied in the district to pay the total cost and expenses of the project concerned.

In lieu of bonds, registered warrants may be issued under the same circumstances and in the same manner as bonds, such warrants to be issued in payment of any or all costs or expenses of the improvements to the amount said costs or expenses were set out in the engineer's report. The warrants shall be redeemable in numerical order and further shall be subject to all provisions of this code relating to local improvement bonds so far as

the same may be applicable, including, but not limited to, the provisions of [sections 50-1762 to 50-1769, Idaho Code](#).

If the council shall determine to issue and sell bonds, it may for the purpose of meeting any cost and expenses of making the improvements, as the same are installed prior to the sale of the bonds, issue interim warrants of the district payable to the contractor, [or] other proper person, upon estimates of the engineer, bearing interest at a rate provided by the council, which interim warrants together with the interest due thereon at the date of the issue of the bonds, shall be redeemed and retired from the proceeds of the sale of the bonds or prepayment of assessments.

Bonds issued hereunder shall have all the requisites of negotiable paper under the Uniform Commercial Code, and shall not be invalid for irregularity or defect in the proceedings for their issuance, sale or delivery, and shall be incontestable in the hands of bona fide purchasers or holders for value thereof. Nothing herein contained shall prohibit any municipality from issuing bonds or warrants in the denomination of one hundred dollars (\$100), or an even multiple thereof, except that bond number 1 of any issue may be of a denomination other than one hundred dollars (\$100).

#### **History.**

[I.C., § 50-1722](#), as added by 1976, ch. 160, § 2, p. 567.

### **STATUTORY NOTES**

#### **Cross References.**

Negotiable instruments — Uniform commercial code, § 28-3-101 et seq.

#### **Prior Laws.**

Former § 50-1722 was repealed. See Prior Laws, § 50-1701.

#### **Compiler's Notes.**

For meaning of words “this code,” see § 50-1701.

The bracketed words “[by]” and “[issue]” in the first sentence in the first paragraph, “[and]” in the last sentence in the second paragraph, and “[or]” near the middle of the fourth paragraph were inserted by the compiler to correct the enacting legislation.

## **CASE NOTES**

### **Decisions Under Prior Law**

Commission on sale.

Impairment of obligation of contract.

Maximum issue.

No constitutional limitation.

Power to issue bonds.

Security.

Warrants payable in numerical order.

#### **Commission on Sale.**

Municipal corporation had no authority to pay commission for sale of bonds issued for sewer improvements. *Lucas v. City of Nampa*, 41 Idaho 35, 238 P. 288 (1925).

#### **Impairment of Obligation of Contract.**

Municipal special assessment district bonds constitute limited liability contracts, obligations of which were impaired by additional taxes on taxpayers in the district for payment thereof. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

#### **Maximum Issue.**

City council could not issue bonds for construction of sewerage system in excess of contract price and expense. *Williams v. City of Caldwell*, 19 Idaho 514, 114 P. 519 (1911).

#### **No Constitutional Limitation.**

Indebtedness of local improvement district was not subject to limitation of Const., art. 8, § 3. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

#### **Power to Issue Bonds.**

Under former statutes authorizing city to issue municipal improvement district bonds to run over a period of ten years, the city had power to

provide for the issuance of improvement district warrants, which were payable in two years, by a method which coincided with the method provided for by former statute for payment of improvement district bonds. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

### **Security.**

Property in local improvement district constituted sole initial security for payment of special improvement bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Warrants Payable in Numerical Order.**

Where a city issued improvement district warrants pursuant to ordinance providing that warrants should be payable in numerical order over a period of two years, the city had the duty to pay the warrants in numerical order, where no question was made at the time of the adoption of the ordinance, as to the power of the city to adopt the same and prescribe the method of payment, and the improvement was made, assessments were levied and collected, and warrants were issued thereunder. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).



**§ 50-1723. Liability of municipality.** — The holder of any bond, issued under the authority of this code, shall have no claim therefor against the municipality by which the same is issued, except to the extent of the funds created and received by assessments against the property within any local improvement district as herein provided and to the extent of the local improvement guarantee fund which may be established by any such municipality under the provisions of this code, but the municipality shall be held responsible for the lawful levy of all special taxes or assessments herein provided and for the faithful accounting of settlements and payments of the special taxes and assessments levied for the payment of the bonds as herein provided. The owners and holders of such bonds shall be entitled to complete enforcement of all assessments made for the payment of such bonds. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued.

**History.**

I.C., § 50-1723, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Cross References.**

Local improvement guarantee fund, § 50-1762.

**Prior Laws.**

Former § 50-1723 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words “this code,” see § 50-1701.

**CASE NOTES**

Decisions Under Prior Law

[City trustee for bondholders.](#)

[Embezzlement by clerk.](#)

Federal government acquiring property.

Liability.

Municipal property not subject to special assessments.

Nature of claim.

Security for improvement bonds.

Tax is “trust fund.”

Text of bond.

Trust funds.

### **City Trustee for Bondholders.**

A city was a trustee for holders of improvement district bonds to the extent that the city was liable for the proper handling of the funds when collected, but the officers of the city were not acting for the city in levying the assessments and collecting them, but were acting as special agents or instrumentalities to accomplish a public end, and the city was not chargeable with their negligence. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

### **Embezzlement by Clerk.**

A city which permitted its clerk to collect local improvement assessments which were properly paid, in part, to bondholders by the city treasurer could not allege illegality of collection by clerk, rather than by county tax collecting officer, as defense to action for value of bonds which remained unpaid as result of city clerk’s embezzlement of funds which clerk had collected, since municipality had ratified the acts of the clerk in collecting such assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Federal Government Acquiring Property.**

Where the United States government in acquiring title to lands within a local improvement district, freed the lands of all liens, including outstanding assessments, and was under no liability at the time for any further reassessments, its action, in withholding from its vendors a portion of the purchase money pending investigation of the possibility that the land might be liable for a reassessment to pay the balance due on bonds, did not

indicate that the government intended to pay bondholders the balance due on the outstanding bonds if it should develop that no lien existed at the date of the acquisition, nor did it give rise to an implied contract to that effect. *John K. & Catherine S. Mullen Benevolent Corp. v. United States*, 290 U.S. 89, 54 S. Ct. 38, 78 L. Ed. 192 (1933).

### **Liability.**

Municipality was not liable in damages for failure of its officers in performance of their duties with respect to estimate, assessment and contract for sewer construction, resulting in invalidity of bonds issued to pay cost thereof. *Moore v. City of Nampa*, 18 F.2d 860 (9th Cir. 1927), *aff'd*, 276 U.S. 536, 48 S. Ct. 340, 72 L. Ed. 688 (1928).

Indebtedness was against property of district and was not an obligation of municipality. The city was merely agent or instrumentality for collection and disbursement of the fund from a sewer district and was not liable for damages where officers failed to perform their duty. *Broad v. City of Moscow*, 15 Idaho 606, 99 P. 101 (1908).

Since warrants were not general obligations of municipality within which the district was situated, municipality was not liable because some of the properties assessed were not of sufficient value to cover their share of liability. *Hughes v. Village of Wendell*, 47 Idaho 370, 275 P. 1116 (1929).

Where special local assessment improvement district bonds were issued and sold, they were not a general obligation of the municipality, but only of the district, in rem, and had for security only the property within the district, and, when the particular assessment levied against any particular individual and piece of property was paid, its share of the bonded indebtedness was liquidated. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **Municipal Property Not Subject to Special Assessments.**

A city was without authority to levy special assessments against its own property for the cost of local improvements. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

### **Nature of Claim.**

Bondholder's claim or lien was a charge in rem only and was not enforceable against the person of the owner nor against the municipality.

Blackwell v. Village of Coeur d'Alene, 13 Idaho 357, 90 P. 353 (1907); Broad v. City of Moscow, 15 Idaho 606, 99 P. 101 (1908).

### **Security for Improvement Bonds.**

Property in local improvement district constituted sole initial security for payment of special improvement bonds. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Tax Is "Trust Fund."**

Funds collected by city through its clerk, by means of improvement district assessments, were "trust funds," pledged exclusively to the payment of the bonds issued against the special assessments. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Text of Bond.**

Failure to copy former section governing municipal liability on bonds into bond did not invalidate it. *Meyers v. City of Idaho Falls*, 52 Idaho 81, 11 P.2d 626 (1932).

### **Trust Funds.**

All funds collected by the city by means of the improvement district assessments were trust funds pledged exclusively to the payment of the bonds issued against the special assessments. *Wheeler v. City of Blackfoot*, 55 Idaho 599, 45 P.2d 298 (1935).

**§ 50-1724. Bond and interest funds.** — Once bonds are issued as provided herein, any funds paid as installment payments of assessments pledged to the payment of such bonds shall be kept in a fund known as the “bond fund” of the district and any funds paid as interest on said installment payments of assessments shall be kept in a fund known as the “interest fund” of the district. The funds shall be deposited in such bank or banks as are designated as depositories of public moneys of such municipalities under the laws of this state, or invested in bonds or warrants of the municipality. Interest received on such funds so deposited or invested shall be placed to the credit of the fund from which it is earned. Maturing bonds shall be paid from the bond fund and the interest on the bonds, when due, shall be paid from the interest fund. If there is sufficient money in the bond fund to pay the principal of one or more bonds, the treasurer may call in and pay such bonds as of the next interest payment date in such manner as may be provided by the council at the time of the issuance of the bonds. The bonds to be called shall be selected by lot and shall, in the event less than all of the outstanding bonds are to be redeemed, insofar as can be done taking into consideration the denominations of the outstanding bonds, represent an equal amount of bonds from each maturity outstanding at the time of the redemption.

**History.**

I.C., § 50-1724, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1724 was repealed. See Prior Laws, § 50-1701.

**CASE NOTES**

Decisions Under Prior Law

[Application of funds.](#)

[Bond guaranty fund illegal.](#)

City not liable for failure to levy.

Diversion of payments.

Limitations inapplicable in favor of city for failing to collect tax.

Mandamus.

Numerical order payments.

Power to issue bonds.

Warrants payable in numerical order.

### **Application of Funds.**

Funds collected should be applied first to payment of interest on all unpaid bonds, and, second, to redemption of unpaid bonds in their order. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

### **Bond Guaranty Fund Illegal.**

Former section authorizing a municipality to create a bond guaranty fund from general taxes to pay deficiency in local improvement district assessments, without providing for notice to taxpayers, was void as not affording them due process. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

### **City Not Liable for Failure to Levy.**

A city was not liable to holders of improvement district bonds for failure to levy an amount sufficient to take care of the interest thereon. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

### **Diversion of Payments.**

City authorities would have no authority to divert assessments paid by property owners to payment of interest or principal due from abutting property owners who failed to pay their assessments as required by law. *New First Nat'l Bank v. City of Weiser*, 30 Idaho 15, 166 P. 213 (1916).

### **Limitations Inapplicable in Favor of City for Failing to Collect Tax.**

Limitations applicable to a cause of action created by statute were not applicable to an action against a city for value of special assessment bonds, which remained unpaid as result of city clerk's embezzlement of funds,

since city's liability was that of trustee, and action brought within four years of city's repudiation of trust was not barred by statute of limitation. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

### **Mandamus.**

Mandamus was proper remedy to compel payment of interest and redemption of bonds upon refusal to do so after funds were available. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

### **Numerical Order Payments.**

Payment of interest and redemption of bonds in their order of issue did not deprive property owners of district of their property without due process of law. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

Holders of improvement district bonds could not complain of payment by a city of certain bonds in their numerical order before maturity years after payment had been made and the fund was insufficient to pay all bonds in full. *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

### **Power to Issue Bonds.**

Under former statutes authorizing city to issue municipal improvement district bonds to run over a period of ten years, the city had power to provide for the issuance of improvement district warrants, which were payable in two years, by a method which coincided with the method provided for by statute for payment of improvement district bonds. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

### **Warrants Payable in Numerical Order.**

Where a city issued improvement district warrants pursuant to ordinance providing that warrants should be payable in numerical order over a period of two years, the city had the duty to pay the warrants in numerical order, where no question was made at the time of the adoption of the ordinance as to the power of the city to adopt the same and prescribe the method of payment, and the improvement was made, assessments were levied and collected, and warrants were issued thereon. *First Nat'l Bank v. City of Caldwell*, 58 Idaho 752, 78 P.2d 1098 (1938).

**§ 50-1725. Reissue of bonds.** — Where any bonds issued under this code are declared invalid or void by order or decree of court, which may be legally reissued, the council of such municipality shall, by ordinance, provide for the reissuance thereof at the same rate of interest and in such amount as will cover the principal and interest due on said bonds, and the ordinance providing for such reissue shall provide for the surrender and cancellation of such bonds upon which there has been a default or which have been declared invalid or void and the lien created by the levy of such assessment or assessments as herein provided shall not be deemed to have been lost or waived by such reissue but shall remain in full force and effect.

**History.**

I.C., § 50-1725, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1725 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words “this code,” see § 50-1701.



**§ 50-1726. Rights against assessments.** — The said bonds of any local improvement district as herein provided, when sold as hereinbefore provided, shall transfer to the owner or holder of such bonds all the rights and interest of such municipality in and with respect to every such assessment and the lien thereby created against the property of each owner assessed as shall not have availed himself of the provisions of this code, in regard to the redemption of his property as aforesaid, and shall authorize owners and holders of such bonds to receive and have collected the assessment or assessments embraced in any such bonds through any of the methods provided by law for the collection of assessments for local improvements.

Whenever any installment of an assessment or the interest thereon made for the payment of principal, or interest on such bonds so issued, is not paid when due and shall become delinquent, the municipality may by a resolution duly adopted declare all unpaid installments against any property to pay the cost and expenses of such improvement to be immediately due, payable and delinquent, and may thereupon cause a delinquency certificate to be issued against said property for the whole of the unpaid assessment against it in the manner hereinafter provided for issuance of delinquency certificates upon any installment of such assessment(s) becoming delinquent, and any such council must pass such resolution upon the written request of the holders of one-half (1/2) of any such bond issue, filed with the clerk.

**History.**

I.C., § 50-1726, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1726 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

Near the end of the second paragraph, the “’s” in the word “assessment’s” was placed in parentheses by the compiler as apparent surplusage.

For meaning of words “this code,” see § 50-1701.

**§ 50-1727. Publication and conclusiveness of proceedings.** — The council may provide for the publication of any ordinance, resolution or other proceeding adopted by it pursuant to this code in the official newspaper of the municipality. For a period of thirty (30) days after such publication any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby, passed or adopted under the provisions of this code shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the ordinance, resolution or proceeding was published, and after such time the validity, legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of validity of any bonds issued pursuant to this code is not raised within thirty (30) days from the date of publication of the ordinance, resolution or proceeding issuing said bonds and fixing their terms, the authority to issue the bonds, the legality thereof and of the assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

**History.**

I.C., § 50-1727, as added by 1976, ch. 160, § 2, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1727 was repealed. See Prior Laws, § 50-1701.

**Compiler's Notes.**

For meaning of words “this code,” see § 50-1701.

Section 3 of S.L. 1976, ch. 160, read: “All local improvement districts heretofore created or attempted to be created, and all assessments heretofore levied therein or attempted to be levied therein, which have not heretofore

been adjudicated invalid, and all notices, assessments and proceedings taken in relation thereto whether void, defective or invalid, in all cases where the improvements contemplated have been made or contracted for, are hereby ratified, validated and confirmed and made sufficient to the same extent as if the same were perfected in the first instance. All acts and proceedings of any municipality had under or by virtue of the local improvement district code, and all contracts heretofore or hereafter made, and all warrants and bonds heretofore or hereafter issued pursuant to said acts and proceedings, are hereby ratified, validated and confirmed. All sections of the local improvement district code not specifically repealed herein are hereby ratified, validated and confirmed and made sufficient to the same extent as if they had been properly enacted in the first instance.”

Section 4 of S.L. 1976, ch. 160, read: “If any section or provision of the hereinafter existing local improvement district code be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of the code as a whole or of any section or provision thereof which is not specifically so adjudged unconstitutional or invalid.”

## **CASE NOTES**

[Statute of limitations.](#)

[Waiver.](#)

**[Statute of Limitations.](#)**

The 30-day limitation period of this section has application to a “contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding or any bonds which may be authorized thereby,” and not to a constitutional attack on a statute. Thus, where property owners objecting to the formation of a local improvement district challenged the constitutionality of the authorizing statute (§ 50-1709) itself, the statutory period of limitations did not apply. [Mangum v. City of Orofino, 105 Idaho 307, 669 P.2d 196 \(1983\).](#)

**[Waiver.](#)**

Failure to contest an ordinance within 30 days results in the waiver of the right to contest the sufficiency of the notice regarding assessment

methodology provided by the ordinance. *Simmons v. City of Moscow*, 111 Idaho 14, 720 P.2d 197 (1986).

**§ 50-1728. Consolidated local improvement districts authorized. —** Solely for the purpose of issuing bonds, registered warrants, or interim warrants, the governing body of any municipality may authorize the establishment of consolidated local improvement districts. The original local improvement districts so consolidated need not be contiguous. If the council orders the creation of such consolidated local improvement districts, the moneys received from the installment payment of the principal of and interest on assessments levied within the original local improvement districts shall be deposited in a consolidated local improvement district bond fund and interest fund to be used to pay the principal of and interest on the outstanding consolidated local improvement district bonds or warrants.

**History.**

I.C., § 50-1728, as added by 1981, ch. 149, § 1, p. 259.

**STATUTORY NOTES**

**Prior Laws.**

Former § 50-1728, which comprised S.L. 1967, ch. 429, § 314, was repealed by S.L. 1976, ch. 160, § 1.

**§ 50-1729 — 50-1737. Assessments — Bonds. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 315-323; am. 1969, ch. 41, §§ 4, 5; am. 1973, ch. 176, § 2, were repealed by S.L. 1976, ch. 160, § 1.

**§ 50-1738. Delinquent installments.** — If any installment or payment is not made as provided hereinbefore and in default, it shall then become delinquent.

**History.**

1967, ch. 429, § 324, p. 1249.



**§ 50-1739. Delinquent certificates.** — As soon as any assessment or installment thereof, of any local improvement district shall become delinquent, the treasurer shall, if such assessment be collected in one (1) payment, mark the same delinquent on the assessment roll, or if for an installment of an assessment, on the “Local Improvement Installment Docket,” and shall add to the amount shown on said assessment roll, or installment docket, a penalty of two per cent (2%) thereon. Within ten (10) days thereafter the treasurer shall prepare and issue to the municipality, in which such local improvement district is located, a delinquency certificate to the property included in each such delinquent assessment or instalment [installment], which certificate shall have the force and effect of a sale of said property to the municipality for the amount thereof, said certificate shall bear date as of the time such assessment or instalment [installment] became delinquent and shall be for the amount thereof plus the penalty charged thereon. Such certificate shall contain, besides the description of the property to be sold, the name of the person assessed, if known, or if unknown, that fact, the amount of the assessment of instalment [installment], plus penalty thereon; the number of the assessment and the name of the improvement district in which assessed; the date when such certificate will go to deed and shall bear interest from date thereof at the rate of ten per cent (10%) per annum. Such certificates shall be made in duplicate, bound together in books in numerical order and filed in the office of the treasurer; provided, that after one (1) such certificate has been issued no further delinquency certificate shall be issued for subsequent instalments [installments] of the same assessment, except as hereinafter provided, and whenever any subsequent installment shall thereafter become delinquent the treasurer shall so mark the same in the installment docket and add the penalty thereto, as hereinbefore provided, and the same shall draw interest at the rate of ten per cent (10%) per annum from date of delinquency until the end of the month in which it is paid.

**History.**

1967, ch. 429, § 325, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions in the second, third, and fourth sentences were added by the compiler to correct the enacting legislation.

**§ 50-1740. Delinquent certificate register.** — Within twenty (20) days after preparing and issuing any delinquency certificate the treasurer shall enter the same in a book to be kept by said treasurer known as “Local Improvement District Delinquency Certificate Register,” which register shall contain in proper columns, the number of the assessment, the name of the district in which assessed, name of the person to whom assessed, if known, description of the property sold, corresponding with the description in the certificate and the assessment roll, amount of assessment, penalty, and the treasurer must regularly number each entry in said register on the margin of said book and put a corresponding number on each original and duplicate delinquency certificate. Such register must contain blank spaces following each entry of a delinquency certificate therein, in which may be entered the name of an assignee thereof, the date of such assignment and the amount paid the assignee, the name of a redemptioner thereof, the date of such redemption and the amount paid by such redemptioner. Such book or register shall be retained by the treasurer and become a part of the records of his office. From and after entry in such register and until two (2) years from its date, any such certificate, unless redeemed, may be purchased from the treasurer in the manner hereinafter provided.

**History.**

1967, ch. 429, § 326, p. 1249.

**§ 50-1741. Assignment of delinquent certificates.** — Whenever any person shall tender to the treasurer in cash the amount of any such certificate and interest thereon at the rate of ten per cent (10%) per annum from date of such certificate to the end of the month in which such purchase is made, together with any subsequent instalments then due with penalties and interest thereon, the treasurer shall assign such delinquency certificate to the purchaser by making and executing for and on behalf of the municipality the blank assignment on both the original and duplicate thereof, and shall deliver the original certificate so assigned to the purchaser. Whenever the purchaser shall be required to pay subsequent assessments in addition to the amount of such delinquency certificate, the fact of such payment and the amount thereof including penalty and interest, shall be indorsed on the original and duplicate certificate so assigned. Thereafter the treasurer shall immediately make the proper entries showing such assignment in the “Local Improvement District Delinquency Register,” and in the “Instalment Docket”; provided, that past due interest coupons and past due bonds of the local improvement district for which such certificate was issued shall be received by the treasurer, at par and accrued interest in payment of such certificates. Such bonds and coupons shall be received by the treasurer, at par and accrued interest in payment of such certificates. Such bonds and coupons shall be forthwith canceled by the treasurer.

**History.**

1967, ch. 429, § 327, p. 1249.

**§ 50-1742. Form of assignment — Assignment by purchaser.** — The assignment prescribed by the preceding section must be substantially in the following form, and indorsed on the certificate:

ASSIGNMENT BY TREASURER

State of Idaho ss.

Municipality ....

For and in consideration of the sum of \$ .... paid to said municipality, the receipt whereof is hereby acknowledged, I do hereby assign to .... whose post-office address is ..... all the right, title and interest of the said municipality in and to the within and foregoing delinquency certificate.

In witness whereof, I have hereunto set my hand at ...., Idaho, this .... day of ....., .....

.....

Treasurer of the municipality of .....

Such delinquency certificate may be assigned by the purchaser; provided, that such assignment must be attached to the original delinquency certificate and a duplicate of such assignment must be delivered to the treasurer who must attach the same to the duplicate delinquency certificate in his office.

The assignment of any delinquency certificate by the purchaser thereof or any assignee of such purchaser must be executed in duplicate and acknowledged as provided by law in the conveyance of real property and such assignment must be substantially in the following form, to wit: “For value received, I hereby assign to .... whose post-office address is ....., all my right, title and interest in and to delinquency certificate No. ...., issued by the treasurer of ...., Idaho, on account of delinquent local improvement district assessments for the year .... on the property described in said certificate.

In witness whereof, I have hereunto set my hand this .... day of ....., .....

.....”

(acknowledgment)

**History.**

1967, ch. 429, § 328, p. 1249; am. 2002, ch. 32, § 23, p. 46.

**§ 50-1743. Redemption.** — At any time within two (2) years from the date of any delinquency certificate, the owner of the property described therein, or any one on his behalf, may redeem such property by paying to the treasurer the amount stated in such certificate together with interest thereon at the date [rate] of ten per cent (10%) per annum, from date thereof to the last day of the month in which such redemption is made. Thereupon the treasurer shall issue to the redemptioner a certificate of redemption which shall state the name of the redemptioner, the date of redemption, the number of the certificate so redeemed, the description of the property contained therein, and the name of the district for which said certificate was issued. In case said certificate has not been assigned, the treasurer shall note such upon the original and duplicate delinquency certificate; if assigned upon the duplicate certificate the fact that the same has been redeemed, the date of redemption and shall note the same upon the “Local Improvement Delinquency Certificate Register” and the “Local Improvement Instalment Docket”; provided, that no redemption of any such certificate shall be allowed unless all assessments which have become due subsequent to the one for which said delinquency certificate shall have been issued with penalties, and interest at the rate of ten per cent (10%) per annum from date of said delinquency to the end of the month in which the same is redeemed, shall be paid, which fact together with the amount paid shall be stated upon the redemption certificate. The money received from the redemption of any property described in a certificate which has been assigned shall be deposited by the treasurer to the credit of the person named in the last assignment of such certificate. The treasurer shall thereupon give notice to such person at the address shown by the record of such deposit, and such person shall thereafter be paid the same by the treasurer upon surrender of such certificate to the treasurer who shall mark the same “Paid” and hold it as a voucher.

**History.**

1967, ch. 429, § 329, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “rate” in the first sentence was inserted by the compiler to correct the enacting legislation.



**§ 50-1744. Deed.** — If the property described in any delinquency certificate is not redeemed within two (2) years from the date thereof, the treasurer, after having given notice hereinafter required, shall issue a deed thereto to the municipality, or if the same has been assigned as hereinbefore provided, then to the person holding the original delinquency certificate under assignment, upon request therefor, and upon the delivery to the treasurer of such original certificate and filing proof of having given notice as required by the treasurer before making a deed to the municipality. Such deed shall recite substantially the matter contained in the certificate and that no person redeemed the property within the time allowed, by law, for its redemption. It shall be signed and acknowledged by the treasurer in the manner required, by law, to entitle the same to be recorded under the laws of this state; provided, that such deed shall not be issued to an assignee until he has paid all subsequent instalments and assessments then delinquent or due upon the property described in the delinquency certificate, together with the penalties and interest thereon. Such deed to an assignee shall be made subject to all unpaid instalments not then due.

**History.**

1967, ch. 429, § 330, p. 1249.

**§ 50-1745. Notice of expiration of time of redemption.** — The treasurer shall, at least one (1) month and not more than three (3) months before the expiration of the time of redemption of any property, serve or cause to be served, a written or printed, or partly written and partly printed notice on the person or persons in the actual possession or occupancy of such land or lots, and shall also, within the same time, serve upon or mail to, the person in whose name the same stands upon the assessment records in the county assessor's office, a copy of said notice; which notice shall state when the delinquency certificate was made, in whose name the property was assessed, the description of the land or lots, the name of the local improvement district for which assessed, the amount of the assessment or instalment, and when the time of redemption will expire. The treasurer shall at the same time send a similar notice, by mail, to each mortgagee or other holder of a recorded lien against such land, in each case where such mortgagee or lienholder has previously filed in the office of the treasurer a written request for such notice and paid the fee therefor, which request shall include the name and address of the mortgagee, the name of the reputed owner of the land, a description of the land and the date of the expiration of the mortgage or lien; no notice need be sent after the date of expiration, unless a further request therefor be duly filed. If the mortgagee or lienholder shall furnish a duplicate form of request for that purpose the treasurer shall certify thereon to the filing of the request and deliver the same to the party filing it. If there is no person in actual possession or occupancy of such land or lot and if the persons in whose name it stands, upon diligent inquiry cannot be found in the state, then the treasurer shall, within the same time, post or have posted, a copy of said notice in a conspicuous place upon said land or lots and in a substantial manner.

Whenever any notice is mailed, as herein required, the fact that the addressee does not receive it, shall not in any manner invalidate or affect the proceedings herein provided.

**History.**

1967, ch. 429, § 331, p. 1249.

**§ 50-1746. Proof of notice.** — The treasurer shall, before issuing any deed to the municipality, make and file his affidavit showing a full compliance with the requirements of the preceding section as to giving notice of the expiration of the period of redemption; before issuing a deed to the holder of any delinquency certificate, the treasurer shall require that affidavits be filed showing a complete compliance with the provisions of the previous section as to giving such notice. Such proof shall be filed in the office of the treasurer and remain a permanent record in such office. Any person making a false affidavit as to any fact required herein shall be guilty of perjury.

**History.**

1967, ch. 429, § 332, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Perjury, § 18-5401 et seq.

**§ 50-1747. Effect of deed as evidence.** — The matters recited in the delinquency certificate must be recited in the deed and such deed duly acknowledged or proved shall be prima facie evidence: (1) that the improvement district was created, the assessment made and the work and improvement done in the manner provided by law; (2) that all notices were given, all hearings were had, orders made and resolutions and ordinances passed and adopted required by law, and that all the proceedings up to the execution and delivery of such deed were had and done in the manner required by law; (3) that the assessments were not paid, the delinquency entries were properly made and delinquency certificate properly issued, as prescribed by law, and by the proper officer; (4) that the property was not redeemed, that the notice required to be given before deed was taken was properly given as required by law, and that the person who executed the deed was the proper officer.

**History.**

1967, ch. 429, § 333, p. 1249.

**§ 50-1748. Delinquency certificate for subsequent instalments. —**  
Whenever any delinquency certificate has been assigned, as hereinbefore provided, and the time for redemption has expired and there are outstanding against the property covered by said certificate, any delinquent instalments subsequent in time to the instalment for which the property was sold, then the treasurer shall issue to the municipality a delinquency certificate for such past due instalments in the same manner, as hereinbefore provided, and shall cancel the previous delinquency certificate and the same shall be of no further force and effect. Such delinquency certificate for subsequent instalments may be assigned in the same manner, as hereinbefore provided, and have the same force and effect.

**History.**

1967, ch. 429, § 334, p. 1249.

**§ 50-1749. Fees of treasurer.** — The treasurer shall receive the following fees, which, when paid, shall be credited to the general fund of the municipality: for issuing any delinquency certificate twenty-five cents (25¢) to be included in the amount of the certificate; for making any deed one dollar (\$1.00), to be paid by the person to whom made; for giving notice to a mortgagee or lienholder fifty cents (50¢), to be paid by such person; for giving notice of expiration of period of redemption one dollar (\$1.00). In all cases where the property is deeded to the municipality the fees shall be charged to the amount for which the deed is taken and shall be paid upon the sale of the property, or the sale of the delinquency certificate.

**History.**

1967, ch. 429, § 335, p. 1249.

**§ 50-1750. Suit to quiet title.** — Whenever the necessary costs and attorney's fees have been advanced by the holders of the bonds of the district or any prospective purchaser or other person, it shall be the duty of the council of such municipality to cause the attorney to commence suit to quiet title to the property described in said deed in the name of the municipality and to secure the possession of the property; provided, that the property described in any number of tax deeds so made to the municipality and against any number of owners of property may be included in the same suit.

**History.**

1967, ch. 429, § 336, p. 1249.

**CASE NOTES**

Decisions Under Prior Law Quiet Title Action, Offset Against Rent.

In a suit to quiet title and recover possession of realty as against a grantee of an invalid deed, issued to purchaser of delinquency certificate for amount of invalid improvement assessments, amount paid by grantee for delinquency certificate, deed, recording fee, and taxes on and improvement of property was required to be deducted from the amount due owners by grantee as rental for use and occupation of the premises. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

**§ 50-1751. Sale of property deeded to municipality.** — At any time after acquiring title and possession of any property, as hereinbefore provided, the municipality may sell such property to any purchaser upon receiving therefor a sum not less than the amount for which the property was sold to the municipality and by the payment of all instalments of assessments subsequent to the one (1) for which such property was sold and then due together with the penalties and interest thereon. The purchaser shall take such property subject to any unpaid general taxes and assessments and to all local improvement district instalments not then due, and the municipality shall thereafter collect such instalments in the manner provided by this code. When such purchase is made and the money paid therefor, the municipality shall issue a deed to the purchaser signed by the mayor and attested by the clerk, which deed shall be executed and acknowledged in the manner required, by law, to entitle the same to be recorded under the laws of this state.

In selling such property and in conveying title thereto compliance with the procedures set forth in chapter 14, title 50, Idaho Code, shall not be required, but no conveyance under this section shall be valid unless it be approved by an affirmative vote of one-half (1/2) plus one (1) member of the full city council.

**History.**

1967, ch. 429, § 337, p. 1249; am. 1973, ch. 61, § 1, p. 101.

**STATUTORY NOTES**

**Cross References.**

Lien of assessment, foreclosure, § 50-1721.

**Compiler's Notes.**

For meaning of the words “this code,” see § 50-1701.

**Effective Dates.**



Section 2 of S.L. 1973, ch. 61, p. 101 provided the act should take effect on and after July 1, 1973.

**§ 50-1752. Sale of property after maturity of bonds.** — Within thirty (30) days after the maturity of the last instalment of any issue of bonds of a local improvement district, if any such bonds or interest coupons shall remain unpaid, any property remaining unsold, to which the municipality has taken title by reason of assessment of such improvement district, shall be appraised and immediately after said appraisal such property shall be offered for sale by giving notice of the time and place of sale thereof by publication of such notice in a newspaper published in the municipality for ten (10) consecutive issues if a daily paper, or in two (2) consecutive issues if a weekly paper, or if there be no newspaper published in such municipality then in a newspaper having general circulation therein, the date of sale to be not less than twenty (20) days from the date of the first publication of such notice. At the time and place designated in the notice the treasurer shall offer such property for sale to the highest bidder, but no sale shall be made for less than the appraised value. If no bid be received for a sum equal to or greater than the appraised value, then the sale may be postponed for not to exceed thirty (30) days, and shall be readvertised, and at the time to which such sale was postponed shall again be offered for sale and sold to the highest bidder. Upon the sale of any property and the payment therefor, a deed shall be executed to the purchaser in the same manner, as provided for the execution of deeds in section 50-1751[, Idaho Code].

**History.**

1967, ch. 429, § 338, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1753. Disposition of funds.** — All money received by the treasurer on account of the payment of assessments or instalments thereof, the assignment or redemption of delinquency certificates, or for rents, issues and profits, or from the sale of any property, title to which is held by the municipality for the benefit of any local improvement district, less any expenses of securing possession of said property, or for the care and operation and sale of the same, shall be deposited to the credit of the interest fund and bond fund of the local improvement district, in the same proportion as the assessment or instalments for which the property was taken. Any money left in a local improvement district interest or bond fund or any money derived from the rental or sale of any real property acquired by the municipality through the sale for delinquent assessments or instalments shall, after all warrants, bonds and coupons of said district have been paid in full, be credited to the general fund of the municipality.

**History.**

1967, ch. 429, § 339, p. 1249.

**STATUTORY NOTES**

**Cross References.**

County bond and interest funds, § 50-1724.

**§ 50-1754. Delinquent certificate not assignable during pendency of action.** — No certificate of delinquency as hereinbefore provided, shall be assigned, or any property sold, to which the municipality has taken a deed, on account of any assessment, or instalment thereof, during the pendency of any proceeding in court affecting the validity of such assessment.

**History.**

1967, ch. 429, § 340, p. 1249.

**§ 50-1755. Duties of officers.** — When the council shall decide that it is to the best interest of the municipality that the duties in this code designated to be performed by the treasurer should be done and performed by the clerk of such municipality, they may at their option, by resolution, duly presented and approved by such council assign such duties to the clerk of such municipality; provided, that the duty of receiving any funds collected by the clerk and the depositing and disbursing of such funds by order of the council shall always be and remain the duty and responsibility of the treasurer; the council shall, in said resolution, devise a proper system or plan whereby the clerk may pay to the treasurer all moneys collected by him and take receipts therefor.

**History.**

1967, ch. 429, § 341, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

For meaning of the words “this code,” see § 50-1701.

**§ 50-1756 — 50-1761. Prior districts — Construction — Separability — Validation — Limitation on assessments. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 342-346, 354, were repealed by S.L. 1976, ch. 160, § 1.

**§ 50-1762. Local improvement guarantee fund — Creation of fund.**

— Any municipal corporation, including chartered municipal corporations, may by general ordinance of appropriation or by levy of a tax of not to exceed two hundredths percent (.02%) of the market value for assessment purposes on all taxable property within the municipal corporation in any one (1) year, or by appropriation from such other sources as may be determined by the council, create a fund for the purpose of guaranteeing to the extent of such fund, the payment of bonds or warrants and interest thereon, hereafter issued against any local improvements therein; provided, that such sum so levied or appropriated in any year shall be more than sufficient to pay the outstanding warrants of said fund and to establish therein a balance, which combined levy and appropriation in any one (1) year shall not exceed five percent (5%) of the outstanding obligations thereby guaranteed; provided, further, that the council shall not levy any tax as herein provided when the amount of moneys in the “Local Improvement Guarantee Fund” equals ten percent (10%) of the total outstanding obligations thereby guaranteed. The tax levies herein authorized and directed shall be additional to and, if need be, in excess of any and all statutory and charter limitations. The fund so created shall be designated “Local Improvement Guarantee Fund.”

**History.**

1967, ch. 429, § 347, p. 1249; am. 1995, ch. 82, § 25, p. 218.

**§ 50-1763. Bonds, warrants and coupons, when paid out of fund — Nonpayment for want of funds — Interest.** — Whenever any municipality has established such “Local Improvement Guarantee Fund,” any bond, warrant or coupon drawn against any local improvement fund is presented to the municipality for payment and there is not sufficient amount in said local improvement fund against which to draw to pay the same, unless otherwise requested by the holder, payment therefor shall be made by warrant drawn against the “Local Improvement Guarantee Fund.” Such warrants when presented to the city treasurer for payment, if not paid, shall be registered and draw interest at a rate as may be fixed by the council. Neither the holder nor the owner of any bond or warrant issued under the provisions of this act shall have any claim therefor, except for payment from the special assessments made for the improvement for which said bond or warrant was issued, and except as against the “Local Improvement Guarantee Fund” herein provided, and the municipality shall not be liable to any holder or owner of such bond or warrant for any loss to the guarantee fund occurring in the lawful operation thereof by the municipality.

**History.**

1967, ch. 429, § 348, p. 1249; am. 1980, ch. 61, § 10, p. 118.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” near the beginning of the second sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.



**§ 50-1764. Subrogation of municipality to rights of payee — Surplus funds — Payment into fund — Preferences.** — Whenever there shall be paid out of the “Local Improvement Guarantee Fund,” any sum on account of principal or interest of a local improvement fund or warrant, the municipality as trustee for the fund, shall be subrogated to all the rights of the holder of the bond or interest coupon or warrant so paid, and the policies thereof, or the assessment underlying the same, shall become part of the guarantee fund. There shall be paid into the guarantee fund any surplus remaining in any local improvement fund after the payment of all outstanding bonds or warrants, payable out of such local improvement fund. Bonds or warrants guaranteed by such fund shall have no preference except in the order of presentation for payment.

**History.**

1967, ch. 429, § 349, p. 1249.

**§ 50-1765. Maintenance and operation and sources of fund.** — The council shall prescribe rules and regulations for the maintenance and operation of the guarantee fund not inconsistent herewith. After the creation of such fund, all money derived from the assignment of delinquency certificates, redemptions, sale of property under foreclosure for delinquent assessments, or from the rent or sale of property, title to which has been obtained by the municipality pursuant to this code, shall be paid into the “Local Improvement Guarantee Fund,” and all delinquency certificates issued and such property acquired shall be held by the municipality for the benefit of such guarantee fund. Money from the guarantee fund may be used to redeem property subject to local improvement assessments from general tax delinquencies, underlying bonds or warrants guaranteed by the fund, or to purchase such property as [at] county tax sales or otherwise, from the county for the purpose of protecting the guarantee fund. After so acquiring title to real property, the municipality may lease or sell and convey the same for such price and on such terms as may be determined by the council, and any provision of law, charter or ordinance to the contrary notwithstanding, and all proceeds resulting therefrom shall belong to and be paid into the guarantee fund, provided, however, that in any event the municipality purchases such property at tax sale or otherwise it shall not be sold for a lesser sum than the city paid therefor.

**History.**

1967, ch. 429, § 350, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed word “at” in the third sentence was inserted by the compiler to correct the enacting legislation.

For meaning of the words “this code,” see § 50-1701.

**§ 50-1766. Replenishment of fund — Warrants — Issuance against fund — Tax levy.** — Whenever there is not a sufficient amount of cash in said “Local Improvement Guarantee Fund,” at any time to pay any and all warrants, together with interest thereon, drawn against said fund, the council may replenish said “Local Improvement Guarantee Fund” by transferring or appropriating to it, moneys from the general fund of the municipality or other available sources, as may be determined by said council, subject, however, to the limitations herein prescribed. Warrants drawing interest, as herein provided, may be issued against said “Local Improvement Guarantee Fund” to meet any financial liability against it; but at the time of making its next annual levy the municipality shall provide for the levy of a sum sufficient with other resources of the guarantee fund to pay warrants so issued and outstanding, the tax for this purpose not to exceed two hundredths percent (.02%) of the market value for assessment purposes on taxable property within the municipal corporation in any one (1) year.

**History.**

1967, ch. 429, § 351, p. 1249; am. 1995, ch. 82, § 26, p. 218.

**§ 50-1767. Bonds and warrants — Revenues from which payable. —**

The holder or owner of any local improvement bond or warrant shall have no claim thereon against the municipality by which the same is issued, except to the extent of the funds created and received by assessments against the property within any local improvement district and to the extent of his pro rata share of any “Local Improvement Guarantee Fund,” authorized and created under the provisions of this code.

**History.**

1967, ch. 429, § 352, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

For meaning of the words “this code,” see § 50-1701.

**§ 50-1768. Bonds payable from fund.** — Whenever a municipality has created a “Local Improvement Guarantee Fund,” under the provisions of [this title,] any local improvement district bonds issued thereafter shall provide that the principal sum of such funds [bonds] and the interest thereon shall be payable out of the local improvement fund created for the payment of cost and expenses of the improvement or out of any “Local Improvement Guarantee Fund,” duly authorized and created, and not otherwise.

**History.**

1967, ch. 429, § 353, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed words “this act” and “bonds” were inserted by the compiler to correct the enacting legislation.

For meaning of “this act”, see Compiler’s Notes, § 50-102.

**§ 50-1769. Excess in fund — Disposition.** — When a “Local Improvement Guarantee Fund” duly created in any municipality exceeds in amount of moneys held therein ten per cent (10%) of the total outstanding obligations thereby guaranteed, then the council, may, by ordinance, authorize the treasurer or appropriate official of said municipality to return and pay such said excess or any part thereof to the general fund of said municipality to return and pay such said excess or any designated part thereof all or any part of local improvement district bonds of said municipality then issued and outstanding or to be issued. The passage of such ordinance shall require the affirmative vote of at least three-fourths (3/4) of the full council.

**History.**

1967, ch. 429, § 355, p. 1249.

**§ 50-1770. Unpatented lands — Assessment for improvements. —**

Whenever any of the public lands are embraced within the boundaries of any city of this state, and the city authorities deem it necessary that a sewer system, street improvements or other public improvements of any kind, authorized by general law, be made therein for the preservation of the health, accommodation or convenience of such inhabitants, the city council may, by ordinance, provide for the assessment of a portion of the expense of such improvement against unpatented lots, blocks or parcels of land, and the improvements thereon, embraced within the limits of such city, to the same extent and amount as though such lands were patented. When patents issue for such lands the lien of the assessment against each lot, piece and parcel of land shall attach immediately and be enforced and collected as other taxes, or as provided, by ordinance, of such city; provided, this section shall not apply nor authorize the creation of any lien upon state lands.

**History.**

1967, ch. 429, § 48, p. 1249.

**§ 50-1771. Reserve fund authorized.** — For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants, or other short-term obligations, the council or other governing body of a governmental entity may create a reserve fund for each obligation in addition to or in lieu of a guarantee fund. The reserve fund shall be separate and apart from any guarantee fund and in an amount not exceeding ten per cent (10%) of the principal amount of the bonds, notes, or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be funded from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor. Reserve fund balances in excess of ten per cent (10%) of the principal amount of the bonds outstanding shall be used to reduce the annual assessments of those participants in the respective local improvement district whose prior assessments have been paid. Whenever the reserve fund is insufficient to meet claims for payment of principal and interest against the reserve fund, the governmental entity may appropriate funds from such other legally available sources as may be determined by the council or governing body of such governmental entity.

**History.**

I.C., § 50-1771, as added by 1988, ch. 326, § 1, p. 988.



**§ 50-1772. Commercially reasonable credit assurances.** — If requested by the petitioners for a local improvement district, and in addition to or in lieu of a reserve or guarantee requirement, the council or other governing body of a governmental entity may impose such commercially reasonable credit assurances as it may deem necessary as a condition of approving a local improvement district. If commercially reasonable, such assurances may include guarantees, letters of credit or bonds in amounts up to the total amount of indebtedness.

**History.**

I.C., § 50-1772, as added by 1999, ch. 291, § 9, p. 722.

Idaho Code Ch. 18

• [Title 50](#)», «[Ch. 18](#)»

## Chapter 18

### CITY IRRIGATION SYSTEMS

Sec.

50-1801. City irrigation system authorized.

50-1802. City control — Petition.

50-1803. Assignment of water stock to city.

50-1804. City water certificate.

50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments.

50-1805A. Pooling of water rights for delivery — Uniform method of allocation of assessments and charges — Allocation and accounting for bonded or contract indebtedness.

50-1806. Apportionment of costs.

50-1807. Levying of annual assessments to defray operating and maintenance costs.

50-1808. Issuance of coupon bonds.

50-1809. Control of ditches.

50-1810. Power of city to prescribe penalties for interference.

50-1811. Board of correction — Changes in assessment books.

50-1812. Correction of irregularities upon giving notice — Omissions.

50-1813. Assessments as prior liens.

50-1814. Notice of time assessments become due — Apportionment of assessments.

50-1815. Entry of delinquent assessments and penalties — Amounts of penalty and interest.

50-1816. Certificate showing amount of collections and delinquencies.

50-1817. Compilation of alphabetical list of delinquencies.

- 50-1818. Certified copy of delinquency list filed — Fee.
- 50-1819. Redemption of lands.
- 50-1820. Unredeemed property deeded to city.
- 50-1821. Notice of pending tax deed.
- 50-1822. Affidavit of compliance by treasurer.
- 50-1823. Tax deed — Form and contents — Title conveyed.
- 50-1824. Deed prima facie evidence of regularity.
- 50-1825. Deed to city — Recitals and form.
- 50-1826. Sale of land by city.
- 50-1827. Payment of state and county taxes by city — Repayment upon redemption — Sale by county for taxes.
- 50-1828. Disposal of funds from sales.
- 50-1829. Action to quiet title against or test validity of assessment — Tender.
- 50-1830. Assessment of city irrigation systems by irrigation district.
- 50-1831. Adjustment and settlement of accounts with irrigation system in operation.
- 50-1832. Ordinances or resolutions establishing boundaries.
- 50-1833. Diversion works for city irrigation system.
- 50-1834. Manner of acquiring or establishing city irrigation system — Power of cities.
- 50-1835. Separability.

**§ 50-1801. City irrigation system authorized.** — Any city within the state of Idaho is hereby authorized, in the whole or part of the city to establish a city irrigation system and to extend the boundaries within which it will supply and deliver irrigation water; to acquire by purchase, contract, eminent domain or otherwise and to operate, maintain, construct, improve, enlarge and extend an irrigation system to supply water to a part or all of the lands, lots, parcels and pieces of real estate within the limits of such city; to acquire by appropriation, purchase, contract, eminent domain or by any other lawful means not herein enumerated any of the public or private waters of the state of Idaho whether such waters are surface or subterranean waters; to acquire, extend, enlarge, maintain and operate any canals, ditches, conduits and rights of way for ditches, canals and conduits by contract, deed, eminent domain or any other lawful means for the use of such city in supplying water to and distributing the same throughout the city.

**History.**

1967, ch. 429, § 356, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Irrigation generally, Title 42, Idaho Code.

Local improvement districts, § 50-1701 et seq.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**§ 50-1802. City control — Petition.** — Every city in the state of Idaho shall have the power by and through its council, upon a petition signed by a majority of the owners or representatives of owners of real property within any city receiving water by distribution from any ditch or canal, whether such ditch or canal be privately or otherwise controlled: to regulate, control and supervise the distribution of all water used by the inhabitants thereof for irrigation purposes; to convey the same by ditches, laterals, pipes, aqueducts, flumes, culverts or other feasible means, through the public streets, avenues and alleys; to apportion such irrigation water among such inhabitants; to regulate the distribution, and otherwise supervise, control and distribute such irrigation water in such a way as to promote the general welfare of the inhabitants of such city.

**History.**

1967, ch. 429, § 357, p. 1249.

**§ 50-1803. Assignment of water stock to city.** — Where the inhabitants of a city own stock in irrigation or canal companies supplying them with irrigation water for use therein, and desire to receive the benefit of the provisions of sections 50-1801 through 50-1835[, Idaho Code], it shall be necessary for such owners of irrigation and canal companies' stock to assign the same over to the city in trust for their use and benefit. Thereafter such city will represent such inhabitants or owners at all stockholders meetings of such irrigation or canal companies, pay all assessments levied against such assigned stocks by such canal or irrigation companies for upkeep or maintenance expense thereof, and thereafter assume full control of conveying, apportioning, regulating and distributing such water to the inhabitants of such city.

If said city subsequently constructs a substitute system whereby irrigation water is supplied to all or a part of said properties from another source, or said city council determines that all or a part of the system need not be continued, then such city may sell, in accordance with chapter 14, title 50, Idaho Code, or lease all or a part of such canal or irrigation company's stock so assigned to it in trust so long as said water can be physically transferred in accordance with the statutory requirements governing water transfers by irrigation and canal companies. All proceeds from any sale or lease shall be used by said city for the benefit of its inhabitants.

**History.**

1967, ch. 429, § 358, p. 1249; am. 1972, ch. 300, § 1, p. 748.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the first paragraph was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 2 of S.L. 1972, ch. 300 declared an emergency. Approved March 27, 1972.

**§ 50-1804. City water certificate.** — In lieu of such stock so assigned to such city, it shall issue to such assignors a city water certificate, showing such assignor to be entitled to all the water to which he was originally entitled under the certificates [of such canal or irrigation companies, which city water certificates] shall be signed by the mayor and clerk of the city, with the corporate seal thereof affixed, guaranteeing to the owner or holder thereof his full property rights concerning the use and benefit to be derived from the water he originally enjoyed under such assigned certificate. Such city water certificate issued in accordance herewith and city ordinances passed in pursuance hereof, shall be prima facie evidence in all courts of law and equity, of the right of the owner and holder thereof to the ownership, use and benefit of the water guaranteed thereby, subject only to the power of the city in which the same is used to convey, control, distribute and apportion the same in accordance with the provisions of this chapter.

**History.**

1967, ch. 429, § 359, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed words in the first sentence were inserted by the compiler and seem to be necessary to complete the sense of this section. Similar words appeared in the former law from which this section was derived.



**§ 50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments.** — Every city incorporated under the laws of the state of Idaho shall have the power to enter into a contract in writing with an irrigation district organized or hereafter organized under the laws of the state of Idaho, or with any person, association or corporation where water has been purchased or is being furnished or used for lands within said irrigation district and within the boundaries of any such city, whereby such city shall assume the duty of the distribution of such water to the persons within such city having the right to the use thereof, and to receive such water at such place as shall be provided for in such contract. Such city may enter into a contract with any irrigation district to act as the agent of the irrigation district and be empowered to collect any or all assessments or charges which such irrigation district shall be authorized by law to levy upon all or any part of the lands within such city. Such assessments shall be entered upon the assessment roll as herein provided under an appropriate column to be known as “\_\_\_\_\_ Irrigation District Assessments” and shall remit to such irrigation district, annually or at more frequent intervals as the contract may provide[,], all moneys collected on account of such levy for the previous year or other remittance period provided by the contract, less the commission contracted to be paid for such collection. If the assessments become delinquent and the property is redeemed from such delinquency, the city shall remit the proportionate part of the amount collected on such delinquency, as the amount due for bonds and interest on such parcels of property shall bear to the other assessments contained in the original tax levy. If a tax deed is taken by the city and thereafter the property so taken is sold as provided in sections 50-1801 through 50-1835, Idaho Code, the irrigation district shall likewise receive its proportionate part of the sale price of such property so sold. Such city shall be entitled to compensation, for collecting assessments and making payments to the irrigation district, in an amount equal to the actual cost which the city incurred in collecting and making such payments. The city shall certify to the district annually, not less than three (3) weeks before the date set for making the annual assessment by the district, the amount set by the city as the cost of collecting and making such payments to the district, and that amount shall be included by the district in its

assessments or charges for that year against the lands for which the city collects and makes payments to the district as provided by the contract. Nothing in sections 50-1801 through 50-1835, Idaho Code, shall be construed to make said city primarily liable for any such irrigation district assessments to be collected or obligations, except for the faithful remittance of the funds collected; provided, however, that under contracts where water rights are pooled for delivery and a uniform method of allocating the assessments and charges of the district has been adopted as authorized by section 50-1805A, Idaho Code, the city shall be primarily liable for all such irrigation district assessments to be collected, including operation, maintenance, and principal and interest on bonded or contract indebtedness.

**History.**

1967, ch. 429, § 360, p. 1249; am. 1981, ch. 31, § 1, p. 48.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the third sentence was added by the compiler to correct the amending legislation.

**§ 50-1805A. Pooling of water rights for delivery — Uniform method of allocation of assessments and charges — Allocation and accounting for bonded or contract indebtedness.** — Except where a landowner makes a timely written demand for delivery of water in accordance with the water right or water rights allocated and made appurtenant to his lands, water rights may be pooled for delivery purposes, but such pooling shall not be deemed a change in place of use and shall not require compliance with sections [section] 42-108 or 42-222, Idaho Code. Failure of a landowner to make written demand for delivery of water in accordance with the water rights allocated and made appurtenant to his land, on or before March 1 of the applicable year, shall be deemed consent by that landowner to the pooling of water rights for delivery purposes as provided in this section. When water rights are pooled for delivery, the city shall adopt a uniform method of allocating the assessments and charges of the irrigation district against all lands for which water rights are thus pooled. The city shall furnish the district a certified list or map showing all lands for which water rights have been pooled and shall indicate that a uniform method of allocating assessments and charges has been established; and subsequent assessments and charges of the district against those lands shall be levied or made as if all such lands constituted a single parcel, but the assessments and charges of the district shall be allocated by the city proportionately and separately for each actual parcel of such lands, according to the list and apportionment of benefits made by the district for the applicable assessment or charge, and no lien shall attach to any parcel except for assessments or charges properly allocated to that parcel.

**History.**

I.C., § 50-1805A, as added by 1981, ch. 31, § 2, p. 48.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the first sentence was added by the compiler to correct the enacting legislation.

**§ 50-1806. Apportionment of costs.** — To defray the expense of conveying, controlling, distributing and apportioning such irrigation water as herein provided, the city may assess and apportion the cost thereof against the several water user [users] or landowners using the same, according to the length of time each user or landowner may use such water, and collect such money and keep it in a separate fund to be known as the “Irrigation Fund” of such city for the purpose of paying such expense, including the assessment of the canal or irrigation companies who furnish such city with water for upkeep and maintenance thereof, upon the assigned stock held by such city, provided, that such city may pay said expense out of the general fund and provide for such payment through the general levy, if a majority of the city council so determine.

**History.**

1967, ch. 429, § 361, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed word “users” was inserted by the compiler to correct the enacting legislation.

**§ 50-1807. Levying of annual assessments to defray operating and maintenance costs.** — The clerk of such city which shall acquire and operate a city irrigation system under sections 50-1801 through 50-1835, Idaho Code, shall act as the assessor of such irrigation system and shall, on or before the fourth Monday of January of each year, prepare an assessment book containing a full and accurate list and description of all of the lots, parcels, pieces and tracts of land within the boundaries of such city irrigation system to which irrigation water is being supplied by such system, and a list of the persons who own, claim or have in possession or control thereof during said year, giving the number of acres in the unplatted portion of such city and the number of the lots and blocks within the boundaries of such city irrigation system listed to each person. The mayor and council of such city shall, on or before the second Wednesday of February of each year, meet and make an estimate of the necessary funds for the expenses of maintaining, operating, improving, extending and enlarging said city irrigation system for the current fiscal year. Said estimate shall also include a reasonable sum not to exceed ten percent (10%) of the total estimate for anticipated unpaid and delinquent taxes and such sum as may be necessary to retire outstanding warrants, indebtedness, sinking funds, bonds and interest of a city irrigation system, and shall spread the same upon their minutes and shall thereupon apportion to each lot, piece or parcel of land within the boundaries of such irrigation system in proportion to the benefits received by such lot, piece or parcel of land growing out of the maintenance and operation of such irrigation system. Such assessment shall be immediately carried out by the city clerk and entered under appropriate columns on the assessment roll. Said assessment roll shall contain an appropriate column for each item assessed and shall be subject to review by the mayor and council of the city as hereinafter provided. On or before the first day of March of each year the city clerk must give notice of the time the mayor and council shall meet to correct the assessments so made; said notice shall be published twice at intervals of not less than six (6) days in the official newspaper to give notice when the mayor and council will meet to correct such assessments so levied and assessed as herein provided. The time fixed for such meeting shall not be later than the twentieth day of March of each year and in the meantime the assessment

books shall remain in the office of the city clerk for the inspection of any person interested.

**History.**

1967, ch. 429, § 362, p. 1249; am. 2001, ch. 186, § 1, p. 648.

**§ 50-1808. Issuance of coupon bonds.** — Every city shall have power and authority to issue coupon bonds in a sufficient amount to acquire by purchase, contract, eminent domain or otherwise, and to construct, improve, enlarge, alter and extend irrigation water, waterworks and an irrigation system for such corporation and an irrigation water supply therefor.

**History.**

1967, ch. 429, § 363, p. 1249.

**§ 50-1809. Control of ditches.** — To fully carry into effect the purposes of sections 50-1801 through 50-1835[, Idaho Code,] every city shall have power to construct, enlarge, diminish, alter or change all irrigation ditches, aqueducts, pipelines, flumes, canals or laterals within its corporate limits that may be necessary to convey, control, distribute, apportion and regulate such irrigation water to the inhabitants thereof in accordance herewith.

**History.**

1967, ch. 429, § 364, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.



**§ 50-1810. Power of city to prescribe penalties for interference. —** Such city after taking over the control, conveyance, distribution and regulation of such irrigating water, shall have power, by ordinance, to declare it a misdemeanor for any unauthorized person to meddle, dam, turn, interfere, or in any manner tamper with such irrigating water and disarrange the schedule of such city and thereby deprive any user or landowner from the uninterrupted use and benefit of his turn of said water, and provide a penalty for such misdemeanor.

**History.**

1967, ch. 429, § 365, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Punishment for misdemeanor when none specified, § 18-113.

**§ 50-1811. Board of correction — Changes in assessment books. —**

At the time of the meeting specified in the notice required by section 50-1807[, Idaho Code], the mayor and council of such city are hereby constituted a board of correction and for that purpose shall meet and continue in session from day to day as long as may be necessary not to exceed three (3) days, exclusive of holidays and make such changes in the said assessment book as may be necessary to make it conform to the facts, and such assessments levied for the maintenance, operation, extension and enlargement of the works may be reviewed by the mayor and council of the city during said time upon the request of any person interested, and within five (5) days after the mayor and council, shall have adjourned as a board of correction, the city clerk shall complete the assessment books as the same may have been adjusted and/or corrected by the mayor and council sitting as a board of correction and shall certify to the same and deliver said books to the city treasurer who shall collect the assessments in the manner herein provided.

**History.**

1967, ch. 429, § 366, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1812. Correction of irregularities upon giving notice — Omissions.** — If the levy of any assessment or assessments for any year as provided by this section, upon any or all the lands, lots, pieces or parcels of real estate within the boundaries of such irrigation system, shall be discovered to be irregular and void because of any irregularity, informality or error in the assessment books or for any other reason, the said mayor and council of the city may meet and correct such errors upon five (5) days prior notice published in the official newspaper, as provided in sections 50-1801 through 50-1835[, Idaho Code,] and at such meeting correct any error or mistake that may have been found to exist which makes such assessment roll invalid, provided, that no invalidity of such assessment roll may be claimed on account of the omission of the name or the incorrect naming of the owner of any lots, pieces or parcels of real estate so assessed or the omission of lands, lots, pieces or parcels of real estate through error or inadvertence from the assessment roll, but that such omitted lot, piece or parcel of land shall be assessed by the city clerk.

**History.**

1967, ch. 429, § 367, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1813. Assessments as prior liens.** — All assessments levied under this act shall be a first and prior lien, subject only to state and county taxes and assessments based on any irrigation bond issue outstanding at the time of the passage of section [sections] 50-1801 through 50-1835[, Idaho Code], against the property assessed from and after the first Monday of April of any year, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof, and any lots, pieces or parcels of real estate within the boundaries of such city irrigation system owned by a city or county and not used purely for governmental purposes shall be subject to such assessment.

**History.**

1967, ch. 429, § 368, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The first bracketed insertion near the middle of the section was added by the compiler to correct the enacting legislation.

The second bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Lien Not Authorized.**

This section does not permit cities to impose a lien upon the property of an owner based on delinquent charges for water, sewer and garbage services furnished to the tenants. *City of Grangeville v. Haskin*, 116 Idaho 535, 777 P.2d 1208 (1989).

**§ 50-1814. Notice of time assessments become due — Apportionment of assessments.** — Upon receipt of such assessment roll the treasurer of the city shall publish a notice in the official newspaper of such city that the said assessments shall be due and payable on or before the 1st day of April of each year, which said notice shall be published twice at intervals of not less than six (6) days. All assessments collected shall, by the city treasurer, be apportioned to the several funds in proportion to the several levies. No irrigation water shall be supplied to any lots, pieces or parcels of land within the boundaries of such irrigation system until such assessments shall have been paid in full.

**History.**

1967, ch. 429, § 369, p. 1249.

**§ 50-1815. Entry of delinquent assessments and penalties — Amounts of penalty and interest.** — On or before the second Monday of July of each year in which the assessments are levied, the treasurer of the city shall enter all delinquent assessments and penalties on the assessment roll, which entry shall be considered to be dated as of the first day of July of each year, and shall have the force and effect of a sale to the city treasurer of the city as grantee in trust for said city of all the lands, parcels, pieces or tracts of real estate entered upon such assessment roll upon which such assessments have not been paid before delinquency. The penalty required to be added on delinquent assessments shall be two per cent (2%) of the amount unpaid and the treasurer of such city shall collect such assessments which are delinquent with such penalty added, together with interest on the amount of such delinquent assessment at the rate of eight per cent (8%) per annum from the date of sale until redemption.

**History.**

1967, ch. 429, § 370, p. 1249.

**§ 50-1816. Certificate showing amount of collections and delinquencies.** — On or before the third Monday of July of each year in which the assessments were [are] levied, the treasurer of the city shall make his certificate to the clerk of the city showing the amount of such assessments collected before delinquency and the amount of such assessments which have become delinquent.

**History.**

1967, ch. 429, § 371, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to correct the enacting legislation.

**§ 50-1817. Compilation of alphabetical list of delinquencies.** — On or before the fourth Monday of July of the year in which such assessments were [are] levied, the city treasurer shall compile a list of such delinquency entries, in cases where redemption has not been made, which list shall contain a description of the lots, lands, parcels and pieces of real estate covered by such delinquency entry and the name of the person or persons to whom they are assessed, together with the amount of such delinquent assessments with penalties, and shall number each entry on such list consecutively in the order such entry appears on the assessment roll and in case such list is not in alphabetical order he shall supplement such list with an alphabetical index.

**History.**

1967, ch. 429, § 372, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to correct the enacting legislation.



**§ 50-1818. Certified copy of delinquency list filed — Fee.** — On or before the fourth Monday of July of the year in which such assessments were [are] levied, the city treasurer shall file a certified copy of the delinquency list, as provided in the preceding section, with the county recorder of the county in which the lands covered by the various delinquent assessments are located which said list shall be kept with the records of said county recorder in a book to be furnished by such city designated “A Record of Delinquent Assessments of the City of . . . . .” Upon receiving such certified list the recorder shall enter the same on his receipt book and shall be entitled to a filing fee of \$2.00 therefor.

**History.**

1967, ch. 429, § 373, p. 1249.

**STATUTORY NOTES**

**Compiler’s Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to correct the enacting legislation.

**§ 50-1819. Redemption of lands.** — After delinquency and prior to three (3) years from the date of delinquency, redemption of the lands may be made by paying to the city treasurer an amount equal to the delinquent assessment thereon, plus the penalty of two per cent (2%) thereon, together with interest at the rate of eight per cent (8%) per annum from the date of delinquency entry until paid. Upon redemption the city treasurer shall note the redemption on the delinquency list and shall issue a redemption certificate in triplicate showing the lands redeemed, the year in which the assessment was made, the delinquency entry number, and deliver one (1) copy thereof to the redemptioner and in case the delinquency list including the land being redeemed has been filed with the county recorder he shall file one copy with the county recorder of the county in which the land is located and thereupon the county recorder shall enter the redemption opposite the recording entry in his records of delinquency assessments for which service the county recorder shall be entitled to a fee of 25¢, which fee shall be added to the amount necessary for redemption and paid by the redemptioner and transmitted to the county recorder by the city treasurer.

**History.**

1967, ch. 429, § 374, p. 1249.

**§ 50-1820. Unredeemed property deeded to city.** — If the property is not redeemed within three (3) years from the date of delinquency entry, the treasurer must make to the city a deed to the property, but the city shall not be entitled to a tax deed for the lands, lots, parcels or pieces of real estate described in such delinquency entry until the following sections have been complied with.

**History.**

1967, ch. 429, § 375, p. 1249.

**§ 50-1821. Notice of pending tax deed.** — The city treasurer shall publish a notice in the official newspaper of the city to the effect that he will take deed to all of the property upon the delinquency list for the year of delinquency (stating the year of delinquency) for which the city is entitled to take title to the property, but such notice need not give the names or the description of the property mentioned in the delinquency list. Said notice shall be inserted three (3) times at intervals of not less than one (1) week and the first insertion be not more than five (5) months and at the last insertion not less than three (3) months from the time of redemption period expired and the city treasurer shall thereupon, not less than three (3) months nor more than five (5) months before the expiration of the time of redemption, mail a notice of pending tax deed to the person or persons in whose name the land, lots, pieces or parcels of property stands in the recorder's office of the county in which said land, lot, piece or parcel of property is situated at such owner's last known place of residence. Said notice shall state when the delinquency entry was made, in whose name the property was assessed, the description of the lands, lots or pieces of real estate for which such delinquency was made, for what year assessed and when the term of redemption will expire. Any mortgagee or holder of a recorded lien upon such real estate or any holder of a bond of any local improvement district within the city may file a request in the office of the city treasurer for a notice similar to the one provided for the person in whose name the title of the real estate stands which said request shall include the name and address of the mortgagee, recorded lienholder or bondholder, the name of the reputed owner of the land, piece or parcel of real estate, the description of the same, the date of the expiration of mortgage or other lien or the maturity of such bonds, and such notice need not be sent after the date of expiration unless a further request therefor be duly filed. If the said mortgagee, lienholder or bondholder shall furnish a duplicate form of request, the treasurer of the city shall certify thereon to the filing of the request and deliver or mail the same to the party filing it. A notation of all such requests shall be inserted in a book by the city treasurer provided for that purpose, and notation of the name of the person and the description of the property and the date of the expiration of the lien shall be inserted in appropriate columns. As a part of the affidavit hereinafter

provided, the city treasurer shall insert a certificate of the mailing of such notice, provided, that personal service of any of the notices provided in this section may be had upon the record owner of the property, mortgagee, recorded lienholder or bondholder in lieu of mailing such notice.

**History.**

1967, ch. 429, § 376, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted

**§ 50-1822. Affidavit of compliance by treasurer.** — The city treasurer shall, before the city shall be entitled to a deed, make an affidavit of his having complied with the conditions thereof, stating particularly the facts relied on as constitute such compliance, which affidavit shall be delivered to the city clerk to be by such officer entered on the records of his office and preserved in the files of his office. The city treasurer shall also cause to be filed with the city clerk an affidavit by the publisher, owner or editor of the official newspaper of the city in which notice of time of taking deed was printed and published, which said printed notice and affidavit of publication shall be filed and preserved among the files of the city clerk. The affidavit of the city treasurer as herein provided and of the publisher, owner or editor of such official newspaper shall be prima facie evidence in all courts that such notice has been given and published as therein stated. Any person swearing falsely to such affidavit shall be deemed guilty of perjury and punished accordingly.

**History.**

1967, ch. 429, § 377, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Perjury, § 18-5401 et seq.

**§ 50-1823. Tax deed — Form and contents — Title conveyed.** — The matters recited in the delinquency entry must be recited in the deed to the city, and such deed duly acknowledged or proved shall be prima facie evidence in that: (1) the property was assessed as required by law; (2) that the property was equalized as required by law; (3) that the assessments were levied in accordance with law; (4) that the assessments were unpaid; (5) that at the proper time the delinquency entry was made as prescribed by law and by the proper officer; (6) that the property was unredeemed; (7) that the person who executed the deed was the proper officer of the city. Such deed duly acknowledged and proved shall be prima facie evidence of the regularity of all proceedings for the assessments up to and including the execution and delivery of the deed. The said deed shall convey to the grantee the right, title, and interest in the property as provided in section 63-1009, Idaho Code.

**History.**

1967, ch. 429, § 378, p. 1249; am. 2016, ch. 273, § 5, p. 751.

**STATUTORY NOTES**

**Amendments.**

The 2016 amendment, by ch. 273, substituted “the right, title, and interest in the property as provided in [section 63-1009, Idaho Code](#)” for “the absolute title to the lands described therein free and clear of all liens and encumbrances except mortgagees of record, holders of liens and bondholders to which notice has not been sent after request, as provided in this act, and except any liens for assessments which have attached subsequent to assessment resulting in the sale and except any lien for state and county taxes” at the end of the section.

**Legislative Intent.**

Section 1 of S.L. 2016, ch. 273 provided: “Legislative Intent. It is the intent of the Legislature to clarify the scope and effect of Idaho’s statutes governing tax deeds. In the case of *Regan v. Owen*, the Idaho Supreme Court addressed whether a tax deed issued pursuant to [Section 63-1009](#),

Idaho Code, has the effect of extinguishing an otherwise valid private easement across the subject property. Similar legislative language exists with respect to counties in [Section 31-808, Idaho Code](#), with respect to irrigation entities in [Section 43-720, Idaho Code](#), and with respect to cities in [Section 50-1823, Idaho Code](#). The court did not decide the issue, but remanded to a lower court. The lower court subsequently ruled that, despite the harsh result, the statute has this effect. While a private access easement was at issue there, the reasoning would also result in the elimination of public utility easements, ditch rights, public highways and rights-of-way, conservation easements, and all manner of third-party rights in the land including, for example, interests of remaindermen following a life estate. By this legislation, the Idaho Legislature rejects that conclusion. It was never the intent of the Legislature to allow local governments to destroy valid property interests held by third parties in land that is subject to a sale or other conveyance based on a tax delinquency, except where notice and opportunity to cure is provided under the statute. Doing so would constitute an uncompensated taking of property under both the Idaho Constitution and the United States Constitution. The Legislature would never have intended such a result and, by this legislation, makes that clear. As its context should have made evident, the purpose of [Section 63-1009, Idaho Code](#), and the other referenced sections, has always been to convey title absolutely free and clear of liens and mortgages of a monetary nature. It was never the intent of the Legislature to allow a local governmental entity to convey more than the delinquent taxpayer owned and thereby to destroy valid property interests held by others without notice and an opportunity to cure. This clarification brings the interpretation of Idaho's tax deed statute into line with the interpretation of similar statutes in other jurisdictions, as had always been the Legislature's intent."

### **Compiler's Notes.**

Section 8 of S.L. 2016, ch. 273 provided: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. Being a clarification of existing law, the Legislature does not view the application of this amendment to prior conveyances as retroactive legislation. In any event, the Legislature expressly intends that these amendments shall be interpreted to apply to any and all conveyances by tax deed, past or future."



**Effective Dates.**

Section 8 of S.L. 2016, ch. 273 declared an emergency. Approved March 30, 2016.

**§ 50-1824. Deed prima facie evidence of regularity.** — Such deed duly acknowledged and proved is prima facie evidence of the regularity of all other proceedings from the assessment by the treasurer up to the execution of the deed.

**History.**

1967, ch. 429, § 379, p. 1249.

**§ 50-1825. Deed to city — Recitals and form.** — Upon the expiration of the period of redemption the city treasurer shall execute to the city a deed to the property described in the delinquency entry; which deed shall recite that it was issued in consideration of the amount of taxes or assessments (specifying the amount) for the year (naming the year) to the city treasurer of the city for the property therein described. Such deed shall be duly acknowledged by the city treasurer and shall be prima facie evidence of full compliance by the city and of all of its officers of every act and thing required to be done as a condition to the issuance of said deed and of the full compliance with the law, prerequisite to the execution of a valid tax deed and that the property has not been redeemed. Any number of descriptions of land held by one (1) person, firm, or corporation within the boundaries of the municipal irrigation system may be included in one (1) deed to the city.

**History.**

1967, ch. 429, § 380, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 50-1826. Sale of land by city.** — All lots, pieces or parcels of land taken by the city under the provisions of this act may be sold by the city under the provisions of sections 50-1401 through 50-1409[, Idaho Code], as property not acquired or used as a public park, playground or public building site.

**History.**

1967, ch. 429, § 381, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1827. Payment of state and county taxes by city — Repayment upon redemption — Sale by county for taxes.** — Such city may pay state and county taxes on any property where the assessments levied hereunder are delinquent and within the boundaries of the city irrigation system, and may purchase any or [of] such property from the county at tax sale and the amount of the taxes paid by the city or the purchase price at tax sale shall be added to and become a part of city's lien on the property and must be repaid upon payment of delinquent assessments or redemption from tax deed, and when so purchased may be sold by the city in the manner provided for selling property acquired by the city for nonpayment of assessments under this act. When any property has been sold by the county for state and county taxes, the city operating a city irrigation system under this chapter may cancel all or a part of the taxes and assessments levied by it under sections 50-1801 through 50-1835[, Idaho Code,] before such sale by the county and may issue or cause to be issued a redemption certificate or quit claim deed upon a proper resolution by the mayor and council without the necessity of advertising such property for sale.

**History.**

1967, ch. 429, § 382, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to correct the enacting legislation.

The term “this act” at the end of the first sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The bracketed insertion in the second sentence was added by the compiler to conform to the statutory citation style.

**§ 50-1828. Disposal of funds from sales.** — All moneys received from the sale of any lots, pieces or parcels of real estate under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] shall be paid into the city irrigation system fund by the treasurer of the city, and shall be apportioned to the various funds on the same basis as levies upon which the sale was made.

**History.**

1967, ch. 429, § 383, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**§ 50-1829. Action to quiet title against or test validity of assessment — Tender.** — Any suit, action or proceeding which may be commenced for the purpose of determining the validity of the sale of land for assessments, as in this act provided, to quiet title against the same or to remove the cloud thereof or to recover possession from the purchaser in possession of the lands so sold or its or his successor or assign, whether bought by the original owner or his successor in interest, shall be commenced within two (2) years from the date of the expiration of the period of redemption allowed by this act and not otherwise. In every action, suit or proceeding brought for such purposes, whether before or after the issuance of tax deed, the person claiming to be the owner, as against the person claiming under said tax deed, shall tender in the action, suit or proceeding and pay into the court at the time of filing the same amount of the purchase price for which the lands were sold together with all taxes and assessments which have been paid by the purchaser of said land after tax sale together with interest thereon at the rate of eight per cent (8%), per annum from the respective time of payment of such sum or sums up to the time of filing such pleading in the action, suit or proceeding. Said sum or such portion thereof as the courts shall find to be just shall be paid by the purchaser, his heirs or assigns, in case the right of title to the purchaser shall fail in such suit, action or proceeding.

**History.**

1967, ch. 429, § 384, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in two places in the first sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1830. Assessment of city irrigation systems by irrigation district.**

— Should any city acquire and operate a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code], which shall be included within the boundaries of one or more irrigation districts, nothing in sections 50-1801 through 50-1835[, Idaho Code,] shall be construed to prevent such irrigation district or irrigation districts from assessing the lands within the boundaries of the city irrigation system for the payment of its just portion of such bonded or other outstanding indebtedness until such bonded or other outstanding indebtedness together with the interest accruing thereon shall have been fully paid and discharged.

**History.**

1967, ch. 429, § 385, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to conform to the statutory citation style.



**§ 50-1831. Adjustment and settlement of accounts with irrigation system in operation.** — Any city operating an irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] which desires to acquire and operate or acquire or operate a city irrigation system as provided under sections 50-1801 through 50-1835[, Idaho Code,] shall cause the accounts between themselves and any irrigation or canal company or irrigation district, as the case may be, to be adjusted and settled at the time such city shall commence to operate a city irrigation system under the provisions of this act.

**History.**

1967, ch. 429, § 386, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions were added by the compiler to conform to the statutory citation style.

The term “this act” at the end of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1832. Ordinances or resolutions establishing boundaries.** — Any city desiring to acquire and operate or acquire or operate a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] for any part or all of such city shall pass and publish an ordinance describing the exterior boundaries of such irrigation system. Thereafter the boundary of such irrigation system may, from time to time, be contracted, extended or enlarged by ordinance of such city; a copy of such ordinance duly certified to be correct by the city clerk shall be recorded in the office of the recorder of the county wherein such city is situated.

**History.**

1967, ch. 429, § 387, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

**§ 50-1833. Diversion works for city irrigation system.** — Any city desiring to operate or operating a city irrigation system under the provisions of sections 50-1801 through 50-1835[, Idaho Code,] may contract for the delivery of irrigation water for all or any portion of the city irrigation system and pay therefor on an equalized basis, and may hold such interest as may be necessary and proper in diversion works, canals or ditches jointly with any corporation or irrigation district for the purpose of conveying water to the city irrigation system, either wholly within or partly within and partly without or wholly without the city limits in order to carry such water from its point of diversion to the boundaries of the city irrigation system; and for the purpose may acquire and hold stock in the name of the mayor of a city, in trust for the water users of such city irrigation system, in any private water corporation to the extent necessary to supply water for the city irrigation system, and such stock shall be deemed to be held in trust by the city for the use and benefit of water users of said city irrigation system. The mayor or the chairman of the council of any city in the absence of the mayor may vote at any annual meeting of such corporation on behalf of the city and may be elected on the board of trustees of any such water or irrigation company, the same as though he personally was a stockholder and as such entitled to be on such board of trustees.

**History.**

1967, ch. 429, § 388, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 50-1834. Manner of acquiring or establishing city irrigation system — Power of cities.** — Cities within this state are hereby authorized to adopt and use any one or all of the methods in this act provided for acquiring or establishing a city irrigation system, and cities and irrigation districts and corporations of this state are by sections 50-1801 through 50-1835[, Idaho Code,] authorized to make, execute and deliver any and all contracts, indentures, deeds and instruments necessary and proper to put sections 50-1801 through 50-1835[, Idaho Code,] into effect and to carry out the provisions hereof and to do any and all things necessary to put into effect and carry out the provisions of sections 50-1801 through 50-1835[, Idaho Code].

**History.**

1967, ch. 429, § 389, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The bracketed insertions in three places were added by the compiler to conform to the statutory citation style.

**§ 50-1835. Separability.** — Should any section, phrase, provision or portion of sections 50-1801 through 50-1835[, Idaho Code,] be held to be unconstitutional or illegal, the same shall not in any manner affect the remainder of sections 50-1801 through 50-1835[, Idaho Code].

**History.**

1967, ch. 429, § 390, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions were added by the compiler to conform to the statutory citation style.

Idaho Code Ch. 19

• [Title 50](#)», «[Ch. 19](#)»

## Chapter 19

### HOUSING AUTHORITIES AND COOPERATION LAW

Sec.

50-1901. Short title.

50-1902. Finding and declaration of necessity.

50-1903. Definitions.

50-1904. Powers of authority.

50-1905. Creation of housing authorities.

50-1906. Termination of housing authority.

50-1907. Cooperation in undertaking housing projects.

50-1908. Tax exemptions and payments in lieu of taxes.

50-1909. Donations to housing authority.

50-1910. Appointment, qualifications and tenure of commissioners.

50-1911. Removal of commissioners.

50-1912. Operation not for profit.

50-1913. Rentals and tenant selection.

50-1914. Eminent domain.

50-1915. Planning, zoning and building laws.

50-1916. Bonds.

50-1917. Form and sale of bonds.

50-1918. Provisions of bonds and trust indentures.

50-1919. Certificate of attorney general. [Repealed.]

50-1920. Remedies of an obligee of authority.

50-1921. Filing of minutes of meetings and reports.

50-1922. Exemption of property from execution sale.

50-1923. Aid from federal government.

50-1924. Construction of powers conferred.

50-1925. Additional remedies conferrable by authority.

50-1926. Separability.

50-1927. Act controlling.



**§ 50-1901. Short title.** — The provisions of sections 50-1901 through 50-1927[, Idaho Code,] may be referred to as the “Housing Authorities and Cooperation Law.”

**History.**

1967, ch. 429, § 391, p. 1249.

**STATUTORY NOTES**

**Cross References.**

County housing authorities and cooperation law, § 31-4201 et seq.

Idaho Housing and Finance Association, § 67-6201 et seq.

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Compiler’s Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**CASE NOTES**

Decisions Under Prior Law Constitutionality.

Former Housing Authorities Law was not void as conflicting with Idaho Const., Art. VIII, § 3. *Lloyd v. Twin Falls Hous. Auth.*, 62 Idaho 592, 113 P.2d 1102 (1941).

**§ 50-1902. Finding and declaration of necessity.** — It is hereby declared: (a) That there exist in this state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(b) That these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (c) That the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions.

**History.**

1967, ch. 429, § 392, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 50-1903. Definitions.** — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) “Authority” or “housing authority” shall mean any of the public corporations created by [section 50-1905, Idaho Code](#).

(b) “Housing project” shall mean any work or undertaking: (1) to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (3) to accomplish a combination of the foregoing. The term “housing project” also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith; to buildings, and the land, equipment, facilities and other real or personal property, which do not contain dwelling units or other living accommodations for persons of low income when such buildings are utilized for administrative, community, health, recreational, welfare or other purposes by or for low-income persons or senior citizens, and redevelopment projects carried out by an authority at the request of local government when such projects include dwelling units which are sold or rented to persons of low income.

(c) “Governing body” shall mean the city council, board of commissioners, board of trustees or other body having charge of the fiscal affairs of the state public body.

(d) “Federal government” shall include the United States of America, the United States department of housing and urban development, or any other

agency or instrumentality, corporate or otherwise, of the United States of America.

(e) “City” shall mean any city in the state of Idaho, including each city having a special charter. “The city” shall include those having a special charter and shall mean the particular city for which a particular housing authority is created.

(f) “Clerk” shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(g) “Area of operation” shall include the city and the area within five (5) miles of the territorial boundaries thereof; provided, however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined. Provided however, that a county housing authority may continue to own and operate any housing project for which it has become financially obligated which is located in a city that subsequently creates a housing authority or in an area annexed by a city that has or subsequently creates a housing authority.

(h) “Slum” shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(i) “Person of low income” shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

(j) “Bonds” shall mean any bonds, notes, interim certificates, debentures or other obligations issued by an authority pursuant to this chapter.

(k) “Real property” shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(l) “Obligee of the authority” or “obligee” shall include any bondholder, trustee or trustees for any bondholders, or lessors demising, to the authority, property used in connection with a housing project, or any assignee or assignees of such lessor’s interest or any part thereof, and the federal government when it is a party to any contract with the authority.

**History.**

1967, ch. 429, § 393, p. 1249; am. 1993, ch. 215, § 1, p. 581; am. 2001, ch. 260, § 7, p. 935.

**STATUTORY NOTES**

**Compiler’s Notes.**

For more information on the United States department of housing and urban development, see <https://www.hud.gov/>.

**Effective Dates.**

Section 9 of S.L. 2001, ch. 260 declared an emergency. Approved on March 28, 2001.

**OPINIONS OF ATTORNEY GENERAL**

**IHFA.**

The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD’s Section 8 programs throughout the state. Every city-or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

**§ 50-1904. Powers of authority.** — A housing authority shall constitute an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority, including the power to contract with other housing authorities for services; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

(b) Within the area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this act or in any other provision of law, to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this act, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein; to acquire, by the exercise of the power of eminent domain, any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for

the insurance of any real or personal property or operation of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance; to rent or sell and to agree to rent or sell dwellings forming part of the housing projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which banks may legally invest funds, subject to the control of the housing authority; to purchase its own bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be cancelled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one (1) or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof, under oath, at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring attendance of witnesses or the production of books and papers, and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the

authority, or excused from attendance; to make available, to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation), its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(i) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing or refinancing of land, buildings or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(j) Any housing project shall be subject to the requirement that the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent (30%) of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent (50%) of the total number of units in the development or at least fifty percent (50%) of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent (50%) of the total number of mobile home lots in the park.

(k) To exercise all or any part or combination of powers herein granted.

### **History.**

1967, ch. 429, § 394, p. 1249; am. 1993, ch. 215, § 2, p. 581; am. 1998, ch. 367, § 6, p. 1146.

## **STATUTORY NOTES**

### **Compiler's Notes.**



The term “this act” in the introductory paragraph and in subsections (a), (c), and (d) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

**§ 50-1905. Creation of housing authorities.** — In any city of the state of Idaho, there may be created an independent public body corporate and politic to be known as a housing authority, which shall not be an agency of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city, by proper resolution, shall declare, at any time hereafter, that there is need for an authority to function in such city. The determination, as to whether or not there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five (25) residents of the city, asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income or rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary, said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities and the extent to which conditions exist in such building which endanger life or property by fire or other causes.

Nothing in this act shall prevent governing bodies from jointly creating by resolution an independent public body corporate and politic to carry out and effectuate the purposes and provisions of this act and to serve the best interests of their respective citizenry.

In any suit, action or proceeding, involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is

such need for an authority and finds in substantially the foregoing terms, no further detail being necessary, that either or both of the above enumerated conditions exist in the city. A copy of such resolution, duly certified by the clerk, shall be admissible in evidence in any suit, action or proceeding.

**History.**

1967, ch. 429, § 395, p. 1249; am. 1998, ch. 367, § 7, p. 1146.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the third paragraph refers to S.L. 1996, Chapter 367, which is codified as §§ 31-4204, 31-4205, 31-4210, 31-4211, 31-4221, 50-1904, 50-1905, 50-1910, 50-1911, and 50-1921.

**OPINIONS OF ATTORNEY GENERAL**

**IHFA.**

The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city-or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

**§ 50-1906. Termination of housing authority.** — The authority shall terminate at such time as the council of the city, by proper resolution, shall declare that there is no longer a need for a housing authority to function within such city. The determination that there is no longer a need for such authority to function (a) may be made by the governing body on its own motion or (b) may be made by the governing body upon motion of the duly appointed and acting commissioners of the authority that they no longer have any need to function within said city.

The council of such city shall, however, before adopting a resolution terminating such authority, determine, by audit if necessary, the financial condition of said authority, and if there is any outstanding liability due and owing by said authority, the city shall provide the necessary funds for satisfaction thereof; if, however, funds are found, over and above such liabilities the city shall provide for the satisfaction of said liabilities and the balance of the funds shall be accepted by the city and the authority shall be released from their responsibility therefor.

Any funds so received by such city, as a result of the termination of the authority, shall be dedicated to the extension, maintenance and promotion of the public parks system of said city for the benefit and welfare of the city.

**History.**

1967, ch. 429, § 396, p. 1249.

**§ 50-1907. Cooperation in undertaking housing projects.** — For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine: (a) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein, to a housing authority or the federal government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or rezone any part of such state public body;

(e) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(f) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing or [of] unsafe, insanitary or unfit dwellings;

(g) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(h) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this act;

(i) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this section;

(j) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

**History.**

1967, ch. 429, § 397, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word “of” in subdivision (f) was inserted by the compiler to correct the enacting legislation.

The term “this act” at the end of subsection (h) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1908. Tax exemptions and payments in lieu of taxes.** — The property of an authority is declared to be public property used for essential public purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof; provided, however, that in lieu of such taxes, an authority may agree to make payments to the city for improvements, services and facilities furnished by such city for the benefit of a housing project, or in lieu of such taxes, an authority may agree to make payments to a school district or school districts, which district or districts include within its boundaries all or a portion of the real property of an authority, for school services and facilities furnished by said school district or districts, for the benefit of the residents of a housing project.

**History.**

1967, ch. 429, § 398, p. 1249.

**§ 50-1909. Donations to housing authority.** — Any city or county, in which a housing authority has been created, shall have the power, from time to time, to lend or donate money to such authority or to agree to take such action; provided, however, that when a housing authority has the money available therefore [therefor] it shall make reimbursement for all such loans made of it.

**History.**

1967, ch. 429, § 399, p. 1249; am. 1993, ch. 215, § 3, p. 581.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to correct the amending legislation.



**§ 50-1910. Appointment, qualifications and tenure of commissioners.**

— When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint, with the approval of the city council, five (5) or seven (7) persons as commissioners of the authority created for said city. Commissioners of the authority shall serve five (5) year terms. If the mayor appoints, with the approval of the city council, five (5) persons as commissioners of the authority, the commissioners, who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, except that all vacancies shall be filled for the unexpired term. If the mayor appoints, with the approval of the city council, seven (7) persons as commissioners of the authority, the commissioners who are first appointed shall be designated to serve terms as follows: one (1) commissioner for a one (1) year term, two (2) commissioners for two (2) year terms, two (2) commissioners for three (3) year terms, one (1) commissioner for a four (4) year term and one (1) commissioner for a five (5) year term, except that all vacancies shall be filled for the unexpired term. Upon resolution by a governing body of a city, after an authority has been created with either five (5) or seven (7) commissioners, the number of commissioners may be increased from five (5) to seven (7) or reduced from seven (7) to five (5). No commissioner of any authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and been qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The service of a housing assistance recipient appointed as a commissioner pursuant to 42 U.S.C. section 1437(b) shall be contingent upon his continued receipt of housing assistance. A commissioner shall receive no compensation for his services for the authority in any capacity, but he shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners. A majority of the appointed commissioners shall constitute a quorum of the

authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The bylaws of the authority shall designate which of the commissioners appointed shall be the first chairman and such chairman shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman of the authority thereafter becomes vacant, the commissioners shall select a chairman from their number, a vice chairman, and may employ a secretary, an executive director who shall serve as an at-will employee of the commissioners, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the city attorney of the city or may employ its own counsel and legal staff. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

**History.**

1967, ch. 429, § 400, p. 1249; am. 1998, ch. 367, § 8, p. 1146; am. 2001, ch. 257, § 2, p. 923.

**§ 50-1911. Removal of commissioners.** — A commissioner of an authority may be removed by the mayor, with the approval of the city council, at any time, with or without cause. The mayor shall cause to be sent a notice of the removal to the commissioner removed, the authority and the city clerk.

**History.**

1967, ch. 429, § 401, p. 1249; am. 1998, ch. 367, § 9, p. 1146.

**§ 50-1912. Operation not for profit.** — It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing adequate, safe and sanitary accommodations, and no housing authority shall construct or operate any such project for profit or as a source of revenue to the city. An authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenue which, together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived, will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects, including the cost of any insurance, and the administrative expenses of the authority; and (c) to create, during not less than the six (6) years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one (1) year thereafter and to maintain such reserve.

**History.**

1967, ch. 429, § 402, p. 1249.

**§ 50-1913. Rentals and tenant selection.** — In the operation or management of housing projects, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) it may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income;

(b) it may rent or lease dwelling accommodations consisting of the number of rooms, but no greater number, which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding; and

(c) it shall not accept any person as a tenant in any housing project, if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five (5) times, the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three (3) or more minor dependents, such ratio shall not exceed six (6) to one (1). In computing the rental for the purpose of selecting tenants, there shall be included in the rental the average annual cost, as determined by the authority, to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this or the preceding section shall be construed as limiting the power of authority to vest, in an obligee, the right, in the event of a default by the authority, to take possession, during the period of such default, of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section.

**History.**

1967, ch. 429, § 403, p. 1249.

**RESEARCH REFERENCES**

**ALR.** — Validity and construction of statute or ordinance establishing rent control benefit or rent subsidy for elderly tenants. [5 A.L.R.4th 922](#).

**§ 50-1914. Eminent domain.** — An authority shall have the right to acquire, by the exercise of the power of eminent domain, any real property which it may deem necessary for its purposes under this act after the adoption of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in title 7, chapter 7, Idaho Code, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the state or any political subdivision thereof may be acquired without its consent.

**History.**

1967, ch. 429, § 404, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the first sentence refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1915. Planning, zoning and building laws.** — All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

**History.**

1967, ch. 429, § 405, p. 1249.

**§ 50-1916. Bonds.** — An authority shall have power to issue bonds, from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. In order to carry out the purposes of sections 50-1901 through 50-1927, Idaho Code, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable: (a) exclusively from the income and revenue of a housing project financed with the proceeds of such bonds, or (b) exclusively from such income and revenues together with grants and contributions from the federal government or other source in aid of such project, or (c) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective or whether the parties have notice thereof.

Neither the commissioners of any authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority shall state on their face that they shall not be a debt of the city, the county, the state nor any political subdivision thereof and neither the city, the county, the state nor any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of said authority. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

**History.**



1967, ch. 429, § 406, p. 1249; am. 1993, ch. 215, § 4, p. 581.

## **CASE NOTES**

### **Decisions Under Prior Law Liability on Bonds.**

Liability on bonds issued by a housing authority was strictly limited. The principal and interest of such bonds were payable exclusively from the income and revenue of the housing project financed with the proceeds thereof, or exclusively from such income and revenue, together with grants from the federal government, and neither the city, the county, the state nor any political subdivision thereof was liable and the bonds were not payable from any funds other than those of the housing authority. **Lloyd v. Twin Falls Hous. Auth.**, 62 Idaho 592, 113 P.2d 1102 (1941).

**§ 50-1917. Form and sale of bonds.** — Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at a rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium as such resolution, its trust indenture, or the bonds so issued, may provide.

The bonds may be sold at public or private sale at not less than par.

In case any of the commissioners or officers of the authority, whose signatures appear on any bonds or coupons, shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

In any suit, action or proceedings, involving the validity or enforceability of any bond of an authority or the security thereof, any such bond, reciting, in substance, that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income, shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with purposes and provisions of this act.

### **History.**

1967, ch. 429, § 407, p. 1249; am. 1970, ch. 133, § 16, p. 309.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” near the end of the third and fourth paragraphs refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1918. Provisions of bonds and trust indentures.** — In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost[,] destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for the redemption and to provide the terms and conditions thereof.

(e) To covenant, subject to the limitations contained in this act, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest, in a trustee or trustees or the holders of bonds or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession of any housing project or part thereof, and, so long as said authority shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee, to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

### **History.**

1967, ch. 429, § 408, p. 1249; am. 1993, ch. 215, § 5, p. 581.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The bracketed comma near the middle of subsection (d) was added by the compiler to correct the enacting legislation.

The term “this act” near the beginning of subsection (e) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1919. Certificate of attorney general. [Repealed.]**

Repealed by S.L. 2014, ch. 251, § 3, effective July 1, 2014.

**History.**

1967, ch. 429, § 409, p. 1249.

**§ 50-1920. Remedies of an obligee of authority.** — An obligee of an authority shall have the right, in addition to all other rights, which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceedings at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority, with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this act.

(b) By suit, action or proceeding in equity, to enjoin any acts which may be unlawful, or the violation of any of the rights of such obligee of said authority.

**History.**

1967, ch. 429, § 410, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” at the end of subsection (a) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.



**§ 50-1921. Filing of minutes of meetings and reports.** — (1) An authority shall file a copy of the minutes of all meetings with the city clerk within ten (10) days after their approval by the authority.

(2) At least once a year, an authority shall file a report with the city clerk of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

(3) An authority shall file with the clerk a copy of the authority's financial reports, any claims and causes of action against the authority, the authority's employee policy handbooks and any changes, modifications, or deletions to the handbooks.

**History.**

1967, ch. 429, § 411, p. 1249; am. 1998, ch. 367, § 10, p. 1146.

**STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" at the end of subsection (2) refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-1922. Exemption of property from execution sale.** — All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues.

**History.**

1967, ch. 429, § 412, p. 1249.

**§ 50-1923. Aid from federal government.** — In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking[,] construction, maintenance or operation of any housing project by such authority.

**History.**

1967, ch. 429, § 413, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the first and second sentences refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

The bracketed comma in the last sentence was inserted by the compiler to correct the enacting legislation.

**§ 50-1924. Construction of powers conferred.** — Nothing in this act or any other law shall be construed as authorizing a housing authority to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the city, the county, the state or any subdivision thereof.

**History.**

1967, ch. 429, § 414, p. 1249; am. 1993, ch. 215, § 6, p. 581.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**Effective Dates.**

Section 7 of S.L. 1993, ch. 215 declared an emergency. Approved March 26, 1993.

**§ 50-1925. Additional remedies conferrable by authority.** — A housing authority shall have power, by its resolution, trust indenture, lease or contract, to confer upon any obligee holding or representing a specified amount in bonds or holding a lease the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument by suit, action or proceeding in any court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as said authority shall continue in default;

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long as said authority shall continue to be in default operate and maintain the same and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

**History.**

1967, ch. 429, § 415, p. 1249.

**§ 50-1926. Separability.** — Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of sections 50-1901 through 50-1927[, Idaho Code], or the application thereof to any person or circumstance, is held invalid, the remainder [of] sections 50-1901 through 50-1927[, Idaho Code,] and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**History.**

1967, ch. 429, § 416, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The first and last bracketed insertions in this section were added by the compiler to conform to the statutory citation style.

The bracketed insertion of the term “[of]” was added by the compiler to correct the enacting legislation.

**§ 50-1927. Act controlling.** — Insofar as the provisions of sections 50-1901 through 50-1927[, Idaho Code,] are inconsistent with the provisions of any other law, the provisions of sections 50-1901 through 50-1927[, Idaho Code,] shall be controlling.

**History.**

1967, ch. 429, § 417, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions were added by the compiler to conform to the statutory citation style.





## Chapter 20

### URBAN RENEWAL LAW

Sec.

50-2001. Short title.

50-2002. Findings and declarations of necessity.

50-2003. Encouragement of private enterprise.

50-2004. Workable program.

50-2005. Finding of necessity by local governing body.

50-2006. Urban renewal agency.

50-2007. Powers.

50-2008. Preparation and approval of plan for urban renewal project.

50-2009. Neighborhood and community-wide plans.

50-2010. Acquisition of property.

50-2011. Disposal of property in urban renewal area.

50-2012. Issuance of bonds.

50-2013. Bonds as legal investments.

50-2014. Property exempt from taxes and from levy and sale by virtue of an execution.

50-2015. Cooperation by public bodies.

50-2016. Title of purchaser.

50-2017. Interested public officials, commissioners or employees.

50-2018. Definitions.

50-2019 — 50-2026. Revenue allocation — Procedures — Purposes.  
[Repealed.]

50-2027. Limitations on review of adoption or modification of plan, and issuance of bonds.

50-2028 — 50-2030. Revenue allocation termination — Effect of revenue allocation on other tax calculations — Urban renewal agency terminated. [Repealed.]

50-2031. Severability.

50-2032. Severability.

50-2033. Amendments.

**§ 50-2001. Short title.** — This act shall be known and may be cited as the “Idaho Urban Renewal Law of 1965”.

**History.**

1965, ch. 246, § 1, p. 600.

**STATUTORY NOTES**

**Compiler’s Notes.**

The term “this act” refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**CASE NOTES**

Limitations on county and municipal indebtedness.

Public use.

**Limitations on County and Municipal Indebtedness.**

Article VIII, § 3 of the Idaho Constitution is not applicable to the Boise redevelopment agency, created pursuant to the Idaho urban renewal law as the alter ego of the city of Boise, even though the city participates in the agency’s creation and in the selection and removal of its commissioners, since the agency is an entity of legislative creation, its powers and duties were established by the legislature, and its powers and operations are not controlled by the city. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Since the Boise redevelopment agency has no powers of taxation and no power to encumber any of the resources of the city of Boise, the provisions of Art. VIII, § 3 of the Idaho Constitution are not applicable to the agency. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The Boise redevelopment agency is not a subdivision of the state within the meaning of § 3 or § 4 of Art. 8 of the Idaho Constitution. *Boise*

Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 499 P.2d 575 (1972).

### **Public Use.**

Inclusion of certain buildings which were not deteriorated in urban renewal plan area does not authorize a taking for other than a public purpose where a predominance of the structures and other improvements are deteriorating and defective. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§ 50-2001 et seq.) constituted a public use as required by the Idaho Constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

**Cited** *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

**§ 50-2002. Findings and declarations of necessity.** — It is hereby found and declared that there exist in municipalities of the state deteriorated and deteriorating areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of these conditions is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenue because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that salvageable areas can be conserved and rehabilitated through appropriate public action as herein authorized, and the cooperation and voluntary action of the owners and tenants of property in such areas.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended as herein provided and the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

**History.**

1965, ch. 246, § 2, p. 600.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term “this act” in the second and third paragraphs refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**CASE NOTES****Relocation Costs.**

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

**Cited** *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

**§ 50-2003. Encouragement of private enterprise.** — An urban renewal agency, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall also give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans, community-wide plans or programs for urban renewal, and general neighborhood renewal plans (consistent with the general plan of the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and the provision of necessary public improvements.

**History.**

1965, ch. 246, § 3, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term “this act” near the beginning of the first and second sentences refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**§ 50-2004. Workable program.** — A municipality for the purposes of this act may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, or to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for: the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and to cooperate with an urban renewal agency for the clearance and redevelopment of deteriorated or deteriorating areas or portions thereof.

**History.**

1965, ch. 246, § 4, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.



**§ 50-2005. Finding of necessity by local governing body.** — No urban renewal agency and no municipality shall exercise the authority hereafter conferred by this act until after the local governing body shall have adopted a resolution finding that: (1) one or more deteriorated or deteriorating areas as defined in this act exist in such municipality; (2) the rehabilitation, conservation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality; and (3) there is need for an urban renewal agency to function in the municipality.

**History.**

1965, ch. 246, § 5, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in two places in this section refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**CASE NOTES**

**Construction.**

The authority granted to a local governing body under this section to make findings does not constitute an unlawful delegation of legislative power because only a fact finding status exists in the local governing body and there are sufficient and adequate standards contained in this section especially when read in combination with § 50-2018. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

**§ 50-2006. Urban renewal agency.** — (a) There is hereby created in each municipality an independent public body corporate and politic to be known as the “urban renewal agency” that was created by resolution as provided in section 50-2005, Idaho Code, before July 1, 2011, for the municipality; provided, that such agency shall not transact any business or exercise its powers hereunder until or unless: (1) the local governing body has made the findings prescribed in section 50-2005, Idaho Code; and provided further, that such agency created after July 1, 2011, shall not transact any business or exercise its powers provided for in this chapter until (2) a majority of qualified electors, voting in a citywide or countywide election depending on the municipality in which such agency is created, vote to authorize such agency to transact business and exercise its powers provided for in this chapter. If prior to July 1, 2011, the local governing body has made the findings prescribed in subsection (a)(1) of this section then such agency shall transact business and shall exercise its powers hereunder and is not subject to the requirements of subsection (a)(2) of this section.

(b) Upon satisfaction of the requirements under subsection (a) of this section, the urban renewal agency is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be established as follows:

(1) Unless provided otherwise in this section, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall designate the number of commissioners to be appointed, and the term of each, provided that the original term of office of no more than two (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term.

(2) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the local governing

body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel. Any commission position that becomes vacant at a time other than the expiration of a term shall be filled by the mayor or chair of the board of county commissioners, if that is the local governing body, by and with the advice and consent of the local governing body, including the mayor, if applicable, and shall be filled for the unexpired term.

(3) By enactment of an ordinance, the local governing body may appoint and designate from among its members to be members of the board of commissioners of the urban renewal agency, provided that such representation shall be less than a majority of the board of commissioners of the urban renewal agency of the members of the local governing body on and after July 1, 2017, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the local governing body, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(4) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency for not more than one (1) calendar year.

(5) By enactment of an ordinance, the local governing body may provide that the board of commissioners of the urban renewal agency shall be elected at an election held for such purpose on one (1) of the November dates provided in [section 34-106, Idaho Code](#), and the ordinance may provide term limits for the commissioners. In this case, all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the elected board of commissioners of the urban renewal agency, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and

accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended. The provisions of chapter 66, title 67, Idaho Code, shall apply to elected commissioners and the county election law shall apply to the person running for commissioner as if they were running for county commissioner. In the event of a vacancy in an elected commissioner position, the replacement shall be appointed by the mayor or chair of the board of county commissioners, if that is the local governing body by and with the advice and consent of the local governing body, and shall be filled for the unexpired term.

(6) In all instances, a member of the board of commissioners of the urban renewal agency must be a resident of the county where the urban renewal agency is located or is doing business.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number.

The commissioners shall elect the chairman, cochairman or vice chairman for a term of one (1) year from among their members. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31 of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets,

liabilities, income and operating expense as of the end of such calendar year. The agency shall be required to hold a public meeting to report these findings and take comments from the public. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk or county recorder and in the office of the agency.

(d) An urban renewal agency shall have the same fiscal year as a municipality and shall be subject to the same audit requirements as a municipality. An urban renewal agency shall be required to prepare and file with its local governing body an annual financial report and shall prepare, approve and adopt an annual budget for filing with the local governing body, for informational purposes. A budget means an annual estimate of revenues and expenses for the following fiscal year of the agency.

(e) An urban renewal agency shall comply with the public records law pursuant to chapter 1, title 74, Idaho Code, open meetings law pursuant to chapter 2, title 74, Idaho Code, the ethics in government law pursuant to chapter 4, title 74, Idaho Code, and the competitive bidding provisions of chapter 28, title 67, Idaho Code.

### **History.**

1965, ch. 246, § 6, p. 600; am. 1976, ch. 256, § 1, p. 871; am. 1986, ch. 9, § 1, p. 49; am. 1987, ch. 276, § 1, p. 568; am. 2002, ch. 143, § 1, p. 394; am. 2005, ch. 213, § 21, p. 637; am. 2011, ch. 317, § 1, p. 911; am. 2015, ch. 141, § 132, p. 379; am. 2016, ch. 349, § 1, p. 1014; am. 2019, ch. 288, § 24, p. 830.

## **STATUTORY NOTES**

### **Cross References.**

Urban renewal law of 1965, § 50-2001 et seq.

### **Amendments.**

The 2011 amendment, by ch. 317, in subsection (a), inserted “that was created by resolution as provided in [section 50-2005, Idaho Code](#), before

July 1, 2011,” added the language at the end of the subsection, which begins “and provided further” and added the (1) and (2) designations; in the introductory paragraph in subsection (b), substituted “Upon satisfaction of the requirements under subsection (a) of this section” for “Upon the local governing body making such findings” and substituted “established” for “appointed or designated”; designated the former last sentence in paragraph (b)(1) as present paragraph (b)(2), redesignating the subsequent paragraphs; in paragraph (b)(2), inserted “by a majority vote of the board or by the local governing body” and added the last two sentences; and, in the third paragraph in subsection (c), deleted “The mayor may appoint a chairman, a cochairman, or a vice chairman for a term of office of one (1) year from among the commissioners, thereafter” from the beginning and inserted the fifth sentence.

The 2015 amendment, by ch. 141, in subsection (e), substituted “chapter 1, title 74” for “chapter 3, title 9”, “chapter 2, title 74” for “chapter 23, title 67”, and “chapter 4, title 74” for “chapter 7, title 59”.

The 2016 amendment, by ch. 349, in subsection (b), added “Unless provided otherwise in this section” at the beginning of paragraph (1), rewrote paragraph (2), which formerly read: “For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the board or by the local governing body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel. Any commission position which becomes vacant at a time other than the expiration of a term shall be filled by a majority vote of the board. The board may elect any person to fill such vacant position where such person meets the requirements of a commissioner provided for in this chapter”, substituted “from among its members to be members of the board of commissioners of the urban renewal agency, provided that such representation shall be less than a majority of the board of commissioners of the urban renewal agency of the members of the local governing body on and after July 1, 2017” for “itself to be the board of commissioners of the urban renewal agency” near the beginning of paragraph (3), added “for not more than one (1) calendar year” at the end of paragraph (4), and added paragraphs (5) and (6).

The 2019 amendment, by ch. 288, in paragraph (b)(5), in the next-to-last sentence, substituted “chapter 66, title 67, Idaho Code” for “[section 50-420, Idaho Code](#)”, and deleted “if the sponsoring entity is a city or the provisions of county election law if the sponsoring entity is a county” following “elected commissioners”.

### **Compiler’s Notes.**

Section 9 of S.L. 2016, ch. 349 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

## **CASE NOTES**

[Limitations on county and municipal indebtedness.](#)

[Relocation costs.](#)

### **[Limitations on County and Municipal Indebtedness.](#)**

[Article VIII, § 3 of the Idaho Constitution](#) is not applicable to the Boise redevelopment agency, created pursuant to the Idaho urban renewal law as the alter ego of the city of Boise, even though the city participates in the agency’s creation and in the selection and removal of its commissioners, since the agency is an entity of legislative creation, its powers and duties were established by the legislature, and its powers and operations are not controlled by the city. [Boise Redevelopment Agency v. Yick Kong Corp.](#), [94 Idaho 876, 499 P.2d 575 \(1972\)](#).

### **[Relocation Costs.](#)**

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the

common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

**Cited** *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)



**§ 50-2007. Powers.** — Every urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act; and to disseminate slum clearance and urban renewal information;

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, off-street parking facilities, public facilities, other buildings or public improvements; and any improvements necessary or incidental to a redevelopment project; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(c) Within its area of operation, to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property or personal property for its administrative purposes, together with any improvements thereon; to hold, improve, renovate, rehabilitate, clear or prepare for redevelopment any such property or buildings; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this act: Provided however,

that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project and related activities, unless the legislature shall specifically so state;

(d) With the approval of the local governing body, (1) prior to approval of an urban renewal plan, or approval of any modifications of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses; and (2) to assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection in the event that the real property is not made part of the urban renewal project;

(e) To invest any urban renewal funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to [section 50-2012, Idaho Code](#), at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(f) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(g) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but are not limited to: (1) plans for carrying out a program of

voluntary compulsory repair and rehabilitation of buildings and improvements, (2) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (3) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(h) To prepare plans for and assist in the relocation of persons, including individuals, families, business concerns, nonprofit organizations and others displaced from an urban renewal area, and notwithstanding any statute of this state to make relocation payments to or with respect to such persons for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(i) To exercise all or any part or combination of powers herein granted;

(j) In addition to its powers under subsection (b) of this section, an agency may construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings and to be used for residential, commercial, industrial, and other uses contemplated by the urban renewal plan, and to provide utilities to the development site; and

(k) To use, lend or invest funds obtained from the federal government for the purposes of this act if allowable under federal laws or regulations.

### **History.**

1965, ch. 246, § 7, p. 600; am. 1972, ch. 156, § 1, p. 344; am. 1987, ch. 259, § 1, p. 536; am. 2011, ch. 317, § 2, p. 911; am. 2013, ch. 63, § 1, p. 139.

## **STATUTORY NOTES**

## **Amendments.**

The 2011 amendment, by ch. 317, inserted “use” near the beginning of subsection (k).

The 2013 amendment, by ch. 63, deleted “to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain, upon sufficient cause and after a hearing on the matter, an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted” following “Within its area of operation” at the beginning of subsection (c).

## **Compiler’s Notes.**

The term “this act,” used throughout this section, refers to S.L. 1965, Chapter 246, which is codified as §§ 50-2001 to 50-2018.

## **CASE NOTES**

### **Relocation Costs.**

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. [Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency](#), 101 Idaho 30, 607 P.2d 1084 (1980).

[Cited Idaho Falls Redevelopment Agency v. Countryman](#), 118 Idaho 43, 794 P.2d 632 (1990).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2008. Preparation and approval of plan for urban renewal project.** — (a) An urban renewal project for an urban renewal area shall not be planned or initiated unless the local governing body has, by resolution, determined such area to be a deteriorated area or a deteriorating area or a combination thereof and designated such area as appropriate for an urban renewal project.

(b) An urban renewal agency may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to an urban renewal agency. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal project, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project and the plan therefor if it finds that (1) a feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families; (2) the urban renewal plan conforms to the general plan of the municipality as a whole; (3) the urban renewal plan gives due consideration to the provision

of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety and welfare of children residing in the general vicinity of the site covered by the plan; and (4) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise: Provided, that if the urban renewal area consists of an area of open land to be acquired by the urban renewal agency, such area shall not be so acquired unless (1) if it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality, or (2) if it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this act, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time: Provided that if modified after the lease or sale by the urban renewal agency of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the urban renewal agency may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by the local governing body of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the urban renewal agency may then cause such plan or modification to be carried out in accordance with its terms.

(g) Notwithstanding any other provisions of this act, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under [42 U.S.C. section 5121](#), or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection (d) of this section and the provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project.

(h) Any urban renewal plan containing a revenue allocation financing provision shall include the information set forth in [section 50-2905, Idaho Code](#).

### **History.**

1965, ch. 246, § 8, p. 600; am. 2011, ch. 317, § 3, p. 911.

## **STATUTORY NOTES**

### **Amendments.**

The 2011 amendment, by ch. 317, substituted “sixty (60) days” for “thirty (30) days” twice in subsection (b); substituted “[42 U.S.C. section 5121](#)” for “Public Law 875, Eighty-first Congress” in subsection (g); and added subsection (h).

### **Compiler’s Notes.**

The term “this act” near the end of subsection (d) and near the beginning of subsection (g) refers to S.L. 1965, Chapter 246, which is codified as §§ 50-2001 to 50-2018.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)



**§ 50-2009. Neighborhood and community-wide plans.** — (a) An urban renewal agency or any public body authorized to perform planning work may prepare a general neighborhood renewal plan for urban renewal areas which may be of such scope that urban renewal activities may have to be carried out in stages over an estimated period of up to ten (10) years. Such plan may include, but is not limited to, a preliminary plan which (1) outlines the urban renewal activities proposed for the area involved, (2) provides a framework for the preparation of urban renewal plans, and (3) indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment. A general neighborhood renewal plan shall, in the determination of the local governing body, conform to the general plan of the locality as a whole and the workable program of the municipality.

(b) A municipality or any public body authorized to perform planning work may prepare or complete a community-wide plan or program for urban renewal which shall conform to the general plan for the development of the municipality as a whole and may include, but is not limited to, identification of slum, blighted, deteriorated or deteriorating areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of urban renewal activities.

(c) Authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor.

### **History.**

1965, ch. 246, § 9, p. 600.

## **STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**§ 50-2010. Acquisition of property.** — (a) An urban renewal agency shall have the right to acquire by negotiation or condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project and related activities under this act. An urban renewal agency may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the United States, the state, or any political subdivision of the state, may be acquired without its consent.

(b) In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

(1) any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, insanitary or otherwise contrary to the public health, safety, or welfare;

(2) the effect on the value of such property, of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

(c) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made or issued any judgment, decree, determination or order for the abatement, prohibition, elimination or correction of any such use,

condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition or operation.

**History.**

1965, ch. 246, § 10, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” at the end of the first sentence in subsection (a) refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**§ 50-2011. Disposal of property in urban renewal area.** — (a) An urban renewal agency may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial, educational or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this act: Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the urban renewal agency may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan except property disposed of by it to the community or any other public body which property must be disposed of pursuant to the provisions of subsection (f) of section 50-2015, Idaho Code, even though such fair value may be less than the cost of acquiring and preparing the property for redevelopment. In determining the fair value of real property for uses in accordance with the urban renewal plan, an urban renewal agency shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the urban renewal agency retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The urban renewal agency in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property without the prior written

consent of the urban renewal agency until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by an urban renewal agency which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part or parts of such contract or plan as the urban renewal agency may determine) may be recorded in the land records of the county in such manner as to afford actual or constructive notice thereof.

(b) An urban renewal agency may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. An urban renewal agency may, by public notice by publication in a newspaper having a general circulation in the community (thirty (30) days prior to the execution of any contract to sell, lease or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section) invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within thirty (30) days after the date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The urban renewal agency shall consider all such redevelopment of [or] rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease or other transfer of any real property acquired by the agency in the urban renewal area. The urban renewal agency may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this act. The agency may execute such contract in accordance with the provisions of subsection (a) and deliver deeds, leases and other instruments and take all steps necessary to effectuate such contract.

(c) An urban renewal agency may temporarily operate and maintain real property acquired by it in an urban renewal area for or in connection with an urban renewal project pending the disposition of the property as authorized in this act, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(d) Any real property acquired pursuant to section 50-2007(d)[, Idaho Code,] may be disposed of without regard to other provisions of this section if the local governing body has consented to the disposal.

(e) Notwithstanding any other provisions of this act, and notwithstanding subsection (b) of this section, land in an urban renewal project area designated under the urban renewal plan for industrial or commercial uses may be disposed of to any public body or nonprofit corporation for subsequent disposition as promptly as practicable by the public body or corporation for redevelopment in accordance with the urban renewal plan, and only the purchaser from or lessee of the public body or corporation, and their assignees, shall be required to assume the obligation of beginning the building of improvements within a reasonable time. Any disposition of land to a nonprofit corporation under this subsection shall be made at its fair value for uses in accordance with the urban renewal plan. Any disposition of land to a public body under this subsection shall be made pursuant to the provisions of subsection (f) of [section 50-2015, Idaho Code](#).

(f) Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation published in the community listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition.

### **History.**

1965, ch. 246, § 11, p. 600; am. 1985, ch. 183, § 1, p. 467; am. 1987, ch. 259, § 2, p. 536.

## **STATUTORY NOTES**

**Compiler's Notes.**

The term "this act" in subsections (a), (b), (c), and (e) refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

The bracketed insertion in the fourth sentence in subsection (b) was added by the compiler to correct the enacting legislation.

The bracketed insertion in subsection (d) was added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 50-2001.

**Effective Dates.**

Section 2 of S.L. 1985, ch. 183 declared an emergency. Approved March 22, 1985.



**§ 50-2012. Issuance of bonds.** — (a) An urban renewal agency shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the urban renewal agency derived from or held in connection with its undertaking and carrying out of urban renewal projects under this act: Provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any urban renewal projects under this act, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the urban renewal agency.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds and other obligations of an urban renewal agency (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the state or any political subdivision thereof, and neither the municipality, the state nor any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds other than those of said urban renewal agency. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the urban renewal agency and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time, or times, bear interest at a rate or rates, be in such denomination or denominations, be in such form either with or without

coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of repayment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance, or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than par at public or private sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the agency may determine or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount on such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the agency of not to exceed the interest cost to the agency of the portion of the bonds sold to the federal government.

(e) In case any of the officials of the urban renewal agency whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the agency in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this act.

### **History.**

1965, ch. 246, § 12, p. 600; am. 1970, ch. 133, § 17, p. 309; am. 1972, ch. 156, § 2, p. 344.

## STATUTORY NOTES

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term "this act" throughout this section refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

## CASE NOTES

### **Mandamus Relief.**

Where an agency petitioned for a writ of mandamus to require agency officials to sign a resolution for the issuance of certain bonds and to proceed to publish notice and execute the bonds, since the agency had available to it other adequate remedies at law and sufficient time within which to pursue those remedies, all mandamus relief requested by the agency could have been accomplished at the district court level by a declaratory judgment action or in other proceedings, and the petition for issuance of a writ of mandamus was denied. *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

**§ 50-2013. Bonds as legal investments.** — All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by an urban renewal agency pursuant to this act: Provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of principal and interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

**History.**

1965, ch. 246, § 13, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term “this act” near the middle of the first sentence refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**§ 50-2014. Property exempt from taxes and from levy and sale by virtue of an execution.** — (a) All property of an urban renewal agency, including funds, owned or held by it for the purposes of this act shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against an agency be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of and pledge or lien given pursuant to this act by an agency on its rents, fees, grants or revenues from urban renewal projects.

(b) The property of an urban renewal agency, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and effective the date an urban renewal agency acquires title to such property it shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof: Provided, that such tax exemption shall terminate when the agency sells, leases or otherwise disposes of such property in an urban renewal area for redevelopment to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

### **History.**

1965, ch. 246, § 14, p. 600; am. 1972, ch. 156, § 3, p. 344.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The term “this act” twice in subsection (a) and near the beginning of subsection (b) refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

### **Effective Dates.**

Section 4 of S.L. 1972, ch. 156 declared an emergency. Approved March 17, 1972.

**§ 50-2015. Cooperation by public bodies.** — (a) For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project and related activities authorized by this act, any public body may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to an urban renewal agency; (2) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities; (4) grant or contribute funds to an urban renewal agency and borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county or other public body, or from any other source; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the federal government, an urban renewal agency or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project and related activities; and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the urban renewal agency. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the urban renewal agency, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects and related activities (including any agency or instrumentality of the United States of America), the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency.

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(c) For the purpose of aiding in the planning, undertaking or carrying out of any urban renewal project and related activities of an urban renewal agency, a municipality may (in addition to its other powers and upon such terms, with or without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection (a) of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance: Provided, that nothing contained in this section shall be construed as authorizing a municipality to give credit or make loans to an urban renewal agency.

(d) For the purposes of this section, a municipality may (in addition to its other powers):

(1) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and levy taxes and assessments for curbs and gutters, streets and sidewalks; zone or rezone any part of the municipality or make exceptions from building regulations; and enter into agreements with an urban renewal agency (which agreements may extend over any period, notwithstanding any provisions or rule of law to the contrary), respecting action to be taken by such municipality pursuant to any of the powers granted by this act:[]

(2) close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and plan or replan any part of the municipality;

(3) within its area of operation, organize, coordinate and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively; and

(4) assume the responsibility to bear any loss that may arise as the result of the exercise of authority by the urban renewal agency under subsection



(d) of [section 50-2007, Idaho Code](#), in the event that the real property is not made a part of the urban renewal project.

(e) For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project and related activities of a municipality, such municipality may issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such municipality. Nothing in this section shall limit or otherwise adversely affect any other section of this act.

(f) Purchase and buy or otherwise acquire land in a project area from an agency for redevelopment in accordance with the plan, with or without consideration as the agency may determine. Any public body which purchases, buys or otherwise acquires land in a project area from an agency for development pursuant to this subsection shall become obligated to:

- (1) use the property for the purpose designated in the redevelopment plans;
- (2) begin the redevelopment of the project area within a period of time which the agency fixes as reasonable; and
- (3) comply with other conditions which the agency deems necessary to carry out the purposes of this act.

### **History.**

1965, ch. 246, § 15, p. 600; am. 1987, ch. 259, § 3, p. 536.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The term “this act” in subsections (a), (d), and (e) refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

The bracketed semi-colon at the end of paragraph (d)(1) was added by the compiler to correct the enacting legislation.

The term “this act” at the end of paragraph (f)(3) refers to S.L. 1987, Chapter 259, which is codified as §§ 50-2007, 50-2011, 50-2015, 50-2018, and 50-2032.

## **CASE NOTES**

### **Loaning of Credit.**

Although action by the city of Boise pursuant to this section may constitute the city’s raising money for or donating or lending credit to the Boise redevelopment agency, the prohibitions of art. VIII, § 4 and [art. XII, § 4 of the Idaho Constitution](#) are not applicable to the agency since it is a public, rather than a private, enterprise. [Boise Redevelopment Agency v. Yick Kong Corp.](#), 94 Idaho 876, 499 P.2d 575 (1972).

**§ 50-2016. Title of purchaser.** — Any instrument executed by an urban renewal agency and purporting to convey any right, title or interest in any property under this act shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned.

**History.**

1965, ch. 246, § 16, p. 600.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in this section refers to S.L. 1965, Chapter 246, which is compiled as §§ 50-2001 to 50-2018.

**§ 50-2017. Interested public officials, commissioners or employees. —**

No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property. Any violation of the provisions of this section shall constitute misconduct in office.

**History.**

1965, ch. 246, § 17, p. 600; am. 1986, ch. 9, § 2, p. 49.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 3 of S.L. 1986, ch. 9 declared an emergency. Approved February 21, 1986.

**§ 50-2018. Definitions.** — The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) “Agency” or “urban renewal agency” shall mean a public agency created by [section 50-2006, Idaho Code](#).

(2) “Municipality” shall mean any incorporated city or town, or county in the state.

(3) “Public body” shall mean the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.

(4) “Local governing body” shall mean the council or other legislative body charged with governing the municipality.

(5) “Mayor” shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(6) “Clerk” shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(7) “Federal government” shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(8) “Deteriorated area” shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare. Provided however, this definition shall not apply to any agricultural operation, as defined in [section 22-4502\(2\), Idaho Code](#), absent the consent of the owner of the agricultural

operation or to any forest land as defined in [section 63-1701\(4\), Idaho Code](#), absent the consent of the forest landowner, as defined in [section 63-1701\(5\), Idaho Code](#), except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(9) “Deteriorating area” shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use; provided, that if such deteriorating area consists of open land the conditions contained in the proviso in [section 50-2008\(d\), Idaho Code](#), shall apply; and provided further, that any disaster area referred to in [section 50-2008\(g\), Idaho Code](#), shall constitute a deteriorating area. Provided however, this definition shall not apply to any agricultural operation, as defined in [section 22-4502\(2\), Idaho Code](#), absent the consent of the owner of the agricultural operation or to any forest land as defined in [section 63-1701\(4\), Idaho Code](#), absent the consent of the forest landowner, as defined in [section 63-1701\(5\), Idaho Code](#), except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(10) “Urban renewal project” may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

- (a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvements;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, off-street parking facilities, public facilities or buildings and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

(d) Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the agency itself, at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(11) “Urban renewal area” means a deteriorated area or a deteriorating area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(12) “Urban renewal plan” means a plan, as it exists from time to time, for an urban renewal project, which plan:

(a) Shall conform to the general plan for the municipality as a whole except as provided in [section 50-2008\(g\), Idaho Code](#); and

(b) Shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) “Related activities” shall mean:

(a) Planning work for the preparation or completion of a community-wide plan or program pursuant to [section 50-2009, Idaho Code](#); and

(b) The functions related to the acquisition and disposal of real property pursuant to [section 50-2007\(d\), Idaho Code](#).

(14) “Real property” shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(15) “Bonds” shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(16) “Obligee” shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with urban renewal, or any assignee or assignees of such lessor’s interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(17) “Person” shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(18) “Area of operation” shall mean the area within the corporate limits of the municipality and the area within five (5) miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town or within the unincorporated area of



the county unless a resolution shall have been adopted by the governing body of such other city, town or county declaring a need therefor.

(19) “Board” or “commission” shall mean a board, commission, department, division, office, body or other unit of the municipality.

(20) “Public officer” shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

### **History.**

1965, ch. 246, § 18, p. 600; am. 1970, ch. 103, § 1, p. 256; am. 1987, ch. 258, § 1, p. 524; am. 1987, ch. 259, § 4, p. 536; am. 1990, ch. 430, § 2, p. 1186; am. 2003, ch. 146, § 1, p. 420; am. 2006, ch. 310, § 1, p. 953; am. 2011, ch. 229, § 6, p. 623; am. 2011, ch. 317, § 4, p. 911.

## **STATUTORY NOTES**

### **Amendments.**

The 2006 amendment, by ch. 310, redesignated the subsections, and added the last sentence in subsections (8) and (9).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 229, in subsections (8) and (9), updated the section references in the last sentences to reflect the 2011 amendment of § 22-4502.

The 2011 amendment, by ch. 317, inserted “or to any forest land as defined in [section 63-1701\(4\), Idaho Code](#), absent the consent of the forest landowner, as defined in [section 63-1701\(5\), Idaho Code](#)” and “or forest land” near the end of subsections (8) and (9).

### **Compiler’s Notes.**

Section 19 of S.L. 1965, ch. 246 read: “Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and

the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

“Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.”

## CASE NOTES

Preciseness of definitions.

Relocation costs.

### **Preciseness of Definitions.**

The definitions contained in this statute are sufficiently precise to give adequate guidelines to the local governing body. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

### **Relocation Costs.**

The rule at common law that utilities must relocate at their own expense is not an absolute but is subject to legislative provision to the contrary and subject to any constitutional prohibition or requirement; however in the absence of clear legislative direction the courts will decline to abolish the common-law rule and establish a rule requiring relocation costs to be paid to permissive users such as the utilities, inasmuch as the urban renewal law appears to contemplate payment of relocation costs to those with more substantial property interests. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 607 P.2d 1084 (1980).

**Cited** *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

## RESEARCH REFERENCES

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2019 — 50-2026. Revenue allocation — Procedures — Purposes.  
[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised I.C., §§ 50-2019 — 50-2026, as added by 1987, ch. 258, § 2-9, p. 524, were repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

**§ 50-2027. Limitations on review of adoption or modification of plan, and issuance of bonds.** — (1) No direct or collateral action attacking or otherwise questioning the validity of any urban renewal plan, project or modification thereto (including one containing a revenue allocation provision), or the adoption or approval of such plan, project or modification, or any of the findings or determinations of the agency or the local governing body in connection with such plan, project or modification, shall be brought prior to the effective date of the ordinance adopting or modifying the plan. No direct or collateral action attacking or otherwise questioning the validity of bonds issued pursuant to section 50-2012, Idaho Code, or section 50-2026(a), Idaho Code, shall be brought prior to the effective date of the resolution or ordinance authorizing such bonds.

(2) For a period of thirty (30) days after the effective date of the ordinance or resolution, any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding, or any bonds which may be authorized thereby, passed or adopted under the provisions of this chapter shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the effective date of the ordinance, resolution or proceeding, and after such time the validity, legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of the validity of any adopted plan or bonds issued pursuant to this chapter is not raised within thirty (30) days from the effective date of the ordinance, resolution or proceeding issuing said bonds and fixing their terms, the authority of the plan, the authority adopting the plan, or the authority to issue the bonds, and the legality thereof, the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

### **History.**

**I.C., § 50-2027**, as added by 1987, ch. 258, § 10, p. 524; am. 1990, ch. 430, § 6, p. 1186.

## STATUTORY NOTES

### **Compiler's Notes.**

Section 50-2026, referred to near the end of subsection (1), was repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 7 of S.L. 1990, ch. 430 declared an emergency. Approved April 12, 1990.

## CASE NOTES

### **Standing.**

This section does not eliminate the need for a petitioner to have satisfied traditional standing requirements when attempting to invalidate a city's ordinance that created an urban renewal plan. *Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002).

**§ 50-2028 — 50-2030. Revenue allocation termination — Effect of revenue allocation on other tax calculations — Urban renewal agency terminated. [Repealed.]**

## STATUTORY NOTES

### Compiler's Notes.

These sections, which comprised I.C., §§ 50-2028 — 50-2030, as added by 1987, ch. 258, §§ 11-13, p. 524, were repealed by S.L. 1990, ch. 430, § 1, effective April 12, 1990.

**§ 50-2031. Severability.** — The provisions of the Idaho Urban Renewal Law of 1965, as it now exists or may hereafter be amended are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

**History.**

I.C., § 50-2031, as added by 1987, ch. 258, § 14, p. 524.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in this section refers to S.L. 1987, Chapter 258, which is compiled as §§ 50-2018, 50-2027, and 50-2031.

**Effective Dates.**

Section 15 of S.L. 1987, ch. 258 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1987. Approved April 1, 1987.

**§ 50-2032. Severability.** — The provisions of this act are hereby declared to be severable; and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

**History.**

**I.C., § 50-2030**, as added by 1987, ch. 259, § 5, p. 536; am. and redesign. 2005, ch. 25, § 97, p. 82.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was originally enacted as § 50-2030. It was redesignated as § 50-2032 because §§ 50-2030 and 50-2031 were previously added by §§ 13 and 14 of ch. 258, S.L. 1987. The redesignation was made permanent by Laws 2005, ch. 25, § 97.

The term “this act” in this section refers to S.L. 1987, Chapter 259, which is compiled as §§ 50-2007, 50-2011, 50-2015, 50-2018 and 50-2032.



**§ 50-2033. Amendments.** — Except for consolidation of revenue allocation areas, a revenue allocation area may only be amended to extend its boundaries as set forth herein. An amendment to an urban renewal plan that does not seek to increase the geographic area of the plan, or does not seek to extend the years of the plan beyond the maximum term allowed under chapter 29, title 50, Idaho Code, is not a prohibited amendment, but may be subject to the limitations set forth in section 50-2903A, Idaho Code. No plan amendment shall be interpreted to or shall cause an extension of the limitations established for the existing revenue allocation area as set forth in section 50-2904, Idaho Code. Subject to the limitations in this section and section 50-2903A, Idaho Code, an urban renewal plan that includes a revenue allocation area may be extended only one (1) time to extend the boundary of the revenue allocation so long as the total area to be added is not greater than ten percent (10%) of the existing revenue allocation area and the area to be added is contiguous to the existing revenue allocation area but such contiguity cannot be established solely by a shoestring or strip of land which comprises a railroad or public right-of-way.

### **History.**

I.C., § 50-2033, as added by 2011, ch. 317, § 5, p. 911; am. 2016, ch. 349, § 2, p. 1014.

## **STATUTORY NOTES**

### **Amendments.**

The 2016 amendment, by ch. 349, substituted “Amendments” for “Prohibited amendment” in the section heading; substituted “may only be amended to extend its boundaries as set forth herein” for “may not be amended to extend its boundaries” at the end of the first sentence; in the second sentence, deleted “created under this chapter” following “urban renewal plan” near the beginning and added “but may be subject to the limitations set forth in section 50-2903A, Idaho Code” at the end; substituted “No plan amendment” for “No amendment to an existing revenue allocation area” at the beginning of the third sentence; and

substituted “Subject to the limitations in this section and [section 50-2903A, Idaho Code](#)” for “Notwithstanding these limitations” at the beginning of the fourth sentence.

**Compiler’s Notes.**

Section 9 of S.L. 2016, ch. 349 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Idaho Code Ch. 21

• [Title 50](#)», «[Ch. 21](#)»

## Chapter 21

### CONSOLIDATION OF CITIES

Sec.

50-2101. Consolidation of cities.

50-2102. Resolution for joint session of governing bodies.

50-2103. Petition for consolidation.

50-2104. Joint session — Resolution specifying time of election.

50-2105. Submission of question to electors — election.

50-2106. Results of election certified to secretary of state.

50-2107. Election of officers of consolidated corporations.

50-2108. Effective date.

50-2109. New corporate successor to former corporations.

50-2110. No property to be taxed for prior indebtedness.

50-2111. Prior obligations or proceedings.

50-2112. Effect of ordinances of consolidated cities.

50-2113. Books of smaller city(ies) property of new city.

50-2114. Expenses of consolidation.

**§ 50-2101. Consolidation of cities.** — Two (2) or more cities, each one of which is contiguous to the other, or to one of the other of said cities, all of which shall be incorporated under general law, may become consolidated into one (1) city, to be thereafter governed in the name and under the government of the greater or greatest in population, as shown by the last federal census, pursuant to proceedings had and taken in accordance with the provisions of sections 50-2101 through 50-2114[, Idaho Code].

**History.**

1967, ch. 429, § 418, p. 1249.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Compiler's Notes.**

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**§ 50-2102. Resolution for joint session of governing bodies.** — The mayor and council of any city, desiring consolidation with the adjacent city or cities, may institute proceedings for consolidating by passing a resolution wherein it shall be stated that such city desires to be consolidated with the adjacent city or cities and shall also request the governing body or bodies of such adjacent city or cities to fix a time and place for a joint session of the governing bodies of the cities to consider consolidation.

**History.**

1967, ch. 429, § 419, p. 1249.

**§ 50-2103. Petition for consolidation.** — The citizens of one or more contiguous cities may institute proceedings for consolidation by petition. Upon receiving a petition for consolidation by either of the cities proposed to be consolidated, which petition shall be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers, the clerk shall duly record the same and give notice to each of the cities proposed to be consolidated. Within thirty (30) days following the giving of notice, it shall be incumbent on the council(s) to proceed as hereinafter provided.

**History.**

1967, ch. 429, § 420, p. 1249; am. 1987, ch. 136, § 1, p. 270.

**§ 50-2104. Joint session — Resolution specifying time of election. —**

When a majority of the governing bodies of each of the cities desires consolidation, or petitions signed by the requisite number of qualified electors in each city have been duly received and recorded by each city, a joint resolution signed by the respective mayors, shall set a time for a special election to be held in each of the cities desiring consolidation. The election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after final adoption, of the joint resolution.

**History.**

1967, ch. 429, § 421, p. 1249; am. 2009, ch. 341, § 129, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, deleted “which dates shall be not less than sixty (60) days nor more than ninety (90) days following such joint meeting and which resolution shall be recorded in the record of proceeding of each of the cities” from the end; and added the last sentence.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-2105. Submission of question to electors — election.** — In each of the cities proposed to be consolidated, on the date fixed by resolution, there shall be held an election for the purpose of submitting to the qualified electors of each of said cities, the question whether such cities shall become consolidated into one (1) city.

**History.**

1967, ch. 429, § 422, p. 1249; am. 2007, ch. 202, § 17, p. 620; am. 2009, ch. 341, § 130, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2007 amendment, by ch. 202, substituted “shall be conducted according to the provisions of chapter 4, title 50, Idaho Code” for “shall be conducted in the manner prescribed by sections 50-401 through 50-422, for general and special city elections” in the last sentence.

The 2009 amendment, by ch. 341, in the section catchline and in text, deleted “special” preceding “election”; and deleted the last sentence, which read: “Such election in each city shall be conducted according to the provisions of chapter 4, title 50, Idaho Code.”

**Compiler’s Notes.**

Section 18 of S.L. 2007, ch. 202 provides: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2106. Results of election certified to secretary of state.** — If a majority of the qualified electors of each city vote in favor of consolidation, the county clerk shall certify the results of the election to the board of county commissioners. The county clerk shall transmit the original abstract of the results of the election to the board of county commissioners. The county clerk shall thereupon transmit the original abstract of the results of the election to the office of the secretary of state. Upon receipt of the original abstract, the secretary of state shall transmit to the county clerk a certificate indicating that the original abstract has been received and filed in his office.

**History.**

1967, ch. 429, § 423, p. 1249; am. 2009, ch. 341, § 131, p. 993.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2107. Election of officers of consolidated corporations.** — In the event that the majority of the votes cast by the electors of each and all such cities proposed to be consolidated shall favor consolidation, the city shall proceed to call an election to be held in all the cities so proposed to be consolidated for the election of officers of the new corporation. Such election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after receipt of the original abstract by the secretary of state.

**History.**

1967, ch. 429, § 424, p. 1249; am. 2009, ch. 341, § 132, p. 993.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2108. Effective date.** — From and after the date of filing an abstract of results of election of officials with the secretary of state, such consolidation shall be deemed to be completed, and such cities shall be deemed to be consolidated into a new corporation under the name of the corporation of the greater or greatest population, and thereupon such new corporation shall be governed in the name of and under the laws and ordinances applicable to such larger or largest city. The officials elected at a special election shall be immediately entitled to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold said offices respectively only until the next general city election in such newly consolidated city, and until their successors are elected and qualified. At the first general city election following the effective date of such newly consolidated city, one-half (1/2) of the city council shall be elected for two (2) year terms, and one-half (1/2) shall be elected for four (4) year terms. The mayor, at such first general city election, shall be elected for a four (4) year term.

**History.**

1967, ch. 429, § 425, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**§ 50-2109. New corporate successor to former corporations.** — Any city, created by the consolidation of two (2) or more cities under the provisions of sections 50-2101 through 50-2114[, Idaho Code], shall for all purposes be deemed and taken to be the successor of the several corporations so consolidated therein; and the title to any property owned or held by any such corporations, in trust or otherwise for public use, shall, upon such consolidation being completed as hereinbefore provided, ipso facto be vested in such new corporation, or any officer of board thereof which has the power to hold or control such property under the law under which the greater or greatest in population of the cities so consolidated was theretofore governed. The governing body of such newly consolidated corporation shall provide for the payment of the indebtedness of each of the cities consolidated therein, and shall levy against the property obligated therefor at the time of the completion of such consolidation and collect the necessary taxes therefor and cause them to be paid to the persons entitled thereto, and for that purpose and for all other purposes, such new consolidated city and its officers shall be deemed the successor and successors of such cities so consolidated and their respective offices, and succeed to both the property and liabilities of such corporation, not otherwise provided for under sections 50-2101 through 50-2114[, Idaho Code].

**History.**

1967, ch. 429, § 426, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions near the beginning and near the end of the section were added by the compiler to conform to the statutory citation style.

**§ 50-2110. No property to be taxed for prior indebtedness.** — No property in any of the cities consolidated under the provisions of sections 50-2101 through 50-2114[, Idaho Code,] shall ever be taxed to pay any portion of any indebtedness of any of the other corporations contracted, or incurred prior to or existing at the time of such consolidation. The governing body of such newly consolidated corporation shall provide for the payment of the indebtedness of each of the consolidated cities therein and shall levy against the property obligated therefor at the time of the completion of such consolidation and collect the necessary taxes therefor and cause them to be paid to the persons entitled thereto.

**History.**

1967, ch. 429, § 427, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2111. Prior obligations or proceedings.** — Consolidation of cities effected under the provisions of sections 50-2101 through 50-2114[, Idaho Code,] shall not affect any debts, demands, liabilities or obligations of any kind existing in favor of or against any such city so consolidated at the time of such consolidation or any action or proceeding then pending in any court in which any such debt, demand, liability or obligation of any kind may be involved, or any action or proceeding brought by or against any such city prior to such consolidation; but all such proceedings shall be continued and concluded, by final judgment or otherwise, in all respects the same as if such consolidation had not been effected.

**History.**

1967, ch. 429, § 428, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2112. Effect of ordinances of consolidated cities.** — All ordinances of any city or cities consolidated under the provisions of sections 50-2101 through 50-2114[, Idaho Code], except those of the one having the greater or greatest population and those not in conflict therewith, shall be deemed repealed and of no further force and effect; provided, however, that such repeal shall not operate to discharge any person from any liability, civil or criminal, then existing, nor to affect any prosecution then pending for any violation of any such ordinances; and all cases then pending in any justices' court, police court or court of record, except of the one having the greater or greatest population, shall upon such consolidation being effected be deemed ipso facto to be transferred to justices' court, police court, or court of record, of the greater or greatest population having jurisdiction of proceedings or of other actions, civil or criminal, of the character so transferred; provided, further, that such repeal shall not apply to ordinances under which vested rights have accrued, or to ordinances relating to proceedings for street or other public improvements or to proceedings for opening, extending, widening or straightening streets or other public places or to proceedings for changing the grade thereof, all of which proceedings shall be continued and conducted by and under the authority of the newly consolidated corporation, with the same force and effect as if continued and conducted by and under the authority of the corporation by which they were commenced. Except as hereinbefore provided, all ordinances of the corporation having the greater or greatest population shall, upon the completion of such consolidation, ipso facto have full force and effect in and throughout the newly consolidated corporation.

**History.**

1967, ch. 429, § 429, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.



Section 1 of S.L. 1969, ch. 100, abolished probate courts, justice of the peace courts and police courts as of 12:01 a.m. on January 11, 1971, and provided that where the words “probate court,” “justice court” or “police court” appear in the Idaho Code they shall mean the district court or magistrate’s division of the district court as the case may be and further provided that where the words “probate judge,” “justice of the peace” or “police judge” appear in the Idaho Code they shall mean district judge or magistrate of the district court as the case may be.

### **CASE NOTES**

**Cited** Perkins v. Pocatello, 92 Idaho 636, 448 P.2d 250 (1968).

**§ 50-2113. Books of smaller city(ies) property of new city.** — All records, papers and documents of the smaller city or cities, in the hands of the clerk of such city or cities, shall be transmitted to the clerk of the newly consolidated city and the treasurer of such smaller city or cities shall on demand turn over all money, books, papers or records in his hands belonging to such smaller city or cities to the treasurer of the new corporation.

**History.**

1967, ch. 429, § 430, p. 1249.

**§ 50-2114. Expenses of consolidation.** — All proper expenses of proceedings for consolidation shall, if the consolidation is made and completed, be paid by the consolidated city; with the exception of costs of conducting the election, which shall be paid by the county. If consolidation is not completed, each city shall pay its respective share of the expenses of the proposed consolidation, with the exception of the costs of conducting the election, which shall be paid by the county.

**History.**

1967, ch. 429, § 431, p. 1249; am. 2009, ch. 341, § 133, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the section, which formerly read: “All proper expenses of proceedings for consolidation shall if such consolidation be made and completed, be paid by the consolidated city; and if such consolidation is not completed each city shall pay the expenses of calling and holding its election.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



## Chapter 22

### DISINCORPORATION PROCEDURE

Sec.

50-2201. Petition for disincorporation.

50-2202. Election to determine question.

50-2203. Canvass of vote.

50-2204. Effect of negative vote.

50-2205. Proceedings upon affirmative vote — Order of disincorporation.

50-2206. Determination of indebtedness — Transmission of money and financial data.

50-2207. Disposition of records.

50-2208. Payment of indebtedness.

50-2209. Collection and disposition of current tax levies.

50-2210. Subsequent tax levies authorized.

50-2211. Disposition of surplus funds.

50-2212. County commissioners vested with power to close city affairs.

50-2213. Payment of costs.

50-2214. Affidavit to be filed.

**§ 50-2201. Petition for disincorporation.** — A city existing under the laws of this state may disincorporate after proceedings had as required by sections 50-2201 through 50-2213, Idaho Code. The council shall, upon receiving a petition therefor, signed by not less than one-half (1/2) of the qualified electors thereof as shown by the vote cast at the last general city election held therein, submit the question of whether such city shall disincorporate to the electors of such corporation. In case such council shall cease to exist or fail to function for a period of two (2) years or more, the petition for said disincorporation of such city signed by a majority of the residents living within said city, shall be filed with the board of county commissioners of the county in which said city is situated. Upon the filing of such petition, showing that the council has failed to function for at least two (2) years prior thereto or has ceased to exist, such board of county commissioners shall have full power and authority to take all proceedings therein as it is authorized by sections 50-2201 through 50-2213, Idaho Code, to disincorporate said city.

**History.**

1967, ch. 429, § 432, p. 1249; am. 2009, ch. 341, § 134, p. 993.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49 of tit. 50.

**Amendments.**

The 2009 amendment, by ch. 341, substituted “not less than one-half (1/2)” for “not less than half” in the second sentence.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2202. Election to determine question.** — The question of disincorporation shall be submitted at an election on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after the election called by the city council or board of county commissioners. Notice of the election shall be published pursuant to the requirements of section 34-1406, Idaho Code, along with two (2) additional notices published weekly.

**History.**

1967, ch. 429, § 433, p. 1249; am. 2009, ch. 341, § 135, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-2203. Canvass of vote.** — The vote at such election shall be taken, canvassed and returned in the same manner as in other elections. The county board of canvassers shall meet within ten (10) days of such election and proceed to canvass the votes cast thereat.

**History.**

1967, ch. 429, § 434, p. 1249; am. 2009, ch. 341, § 136, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, rewrote the last sentence, which formerly read: “Such governing body of the city or county, as the case may be, shall meet on the Monday next succeeding the day of such election and proceed to canvass the votes cast thereat.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2204. Effect of negative vote.** — If it is found by the canvass of said votes that less than two-thirds (2/3) of the votes cast were in favor of disincorporation, the county board of canvassers shall declare the petition for disincorporation denied, in which case no other election shall be held on the question of disincorporating said city until after the expiration of two (2) years from the date of the election so held.

**History.**

1967, ch. 429, § 435, p. 1249; am. 2009, ch. 341, § 137, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, substituted “the county board of canvassers shall declare” for “such governing body of the city or county, as the case may be, shall declare.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2205. Proceedings upon affirmative vote — Order of disincorporation.** — In case it shall appear from said canvass that two thirds ( $\frac{2}{3}$ ) of all the votes cast were in favor of disincorporation, said county commission shall, under their hands make and file in their office, and cause to be entered upon their record or proceedings, an order that the petition for such disincorporation be granted, and declaring that said corporation be disincorporated, said order to take effect thirty (30) days from and after the holding of the election.

**History.**

1967, ch. 429, § 436, p. 1249.

**§ 50-2206. Determination of indebtedness — Transmission of money and financial data.** — Said county clerk shall, forthwith, after ascertaining by said canvass that said disincorporation has been carried, determine the amount of indebtedness of said city, the taxes payable, the amount of money in the treasury, and shall take possession thereof within thirty (30) days from the date of said election, he shall transmit a certified statement of said amounts to the board of county commissioners of the county in which said city is situated, and the county clerk shall, before the expiration of said thirty (30) days, turn over, to the treasurer of said county, all moneys of said corporation and said county treasurer shall place said money in a special fund, to be drawn upon as hereinafter provided.

**History.**

1967, ch. 429, § 437, p. 1249.

**§ 50-2207. Disposition of records.** — Upon the disincorporation of said city, every public officer of said city shall immediately turn over, to the board of county commissioners of the county in which said corporation is situated, all public property of every nature and description in their possession.

**History.**

1967, ch. 429, § 438, p. 1249; am. 2010, ch. 35, § 3, p. 65.

**STATUTORY NOTES**

**Amendments.**

The 2010 amendment, by ch. 35, deleted a proviso from the end of the section, which read: “Provided however, that all court records of the police court, if such there be in said corporation, shall be retained by said police judge as justice of the peace of such precinct in which said corporation is situated, and as such justice of the peace, he shall have authority to execute and complete all unfinished business standing on the same.”

**§ 50-2208. Payment of indebtedness.** — Nothing contained in sections 50-2201 through 50-2213[, Idaho Code,] shall relieve said city or the territory included in it, from any liability for any debt contracted by such city prior to its disincorporation. All warrants for said indebtedness shall be drawn, by the board of county commissioners of the county in which said corporation is situated, on the fund herein above provided in the county treasury.

**History.**

1967, ch. 429, § 439, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Fund for paying indebtedness, § 50-2206.

**Compiler's Notes.**

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2209. Collection and disposition of current tax levies.** — If at the time of such disincorporation, a tax shall have been levied by said city and remains uncollected, it shall be the duty of the tax collector of the county in which said corporation is situated to collect said tax when due and pay the same into the county treasury. All property upon which any city tax has been levied and the same has become delinquent, either before or after the date of such disincorporation, and all property, sold for any tax levy by said corporation, may be redeemed by any party interested within the time provided by law by the payment to the county treasurer upon the estimates of the auditor, of the money that would have been necessary to redeem said property, had such city not disincorporated. All moneys paid into the county treasury under the provisions of sections 50-2201 through 50-2213[, Idaho Code,] shall be placed to the credit of the special fund hereinbefore provided.

**History.**

1967, ch. 429, § 440, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Special fund, § 50-2206.

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2210. Subsequent tax levies authorized.** — If, at any time after the disincorporation of said city, it shall be found that there is not sufficient money in the treasury to the credit of the fund, herein above provided, with which to pay any indebtedness of said corporation, the board of county commissioners of said county shall have the power, and it shall be their duty to levy, and there shall be collected from the territory formerly included within said city, a tax or taxes sufficient in amount to pay the indebtedness of said corporation as the same shall become due. Such tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the said county are levied and collected and shall be an additional tax upon the property included within said territory for the payment of said debts.

**History.**

1967, ch. 429, § 441, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Special fund, § 50-2206.



**§ 50-2211. Disposition of surplus funds.** — If, after payment of the debts of said corporation, any surplus shall remain in the hands of said county treasurer to the credit of the fund hereinbefore mentioned, the money so remaining shall be transferred to the school fund of the district or districts covered by said city.

**History.**

1967, ch. 429, § 442, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Special fund, § 50-2206.

**§ 50-2212. County commissioners vested with power to close city affairs.** — Said board of county commissioners shall make provisions for the collection of the amounts due to said corporation and for the closing up of its affairs, and any act or acts, necessary for such purpose and not otherwise provided, shall, upon the order of said board of county commissioners directing the same, be as fully done and performed by the officer or officers performing similar duties for the said county, and with as full effect as if the same had been performed by the proper officer of said city, before disincorporation. Said county shall succeed to and possess all rights of said corporation in and to said indebtedness and shall have power to sue for or otherwise collect any such debts in the name of the county.

**History.**

1967, ch. 429, § 443, p. 1249.

**§ 50-2213. Payment of costs.** — All costs and expenses of ascertaining the information hereinbefore mentioned and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of said board of county commissioners, provided for in sections 50-2201 through 50-2213[, Idaho Code], shall be paid out of the special fund in said county treasury.

**History.**

1967, ch. 429, § 444, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Special fund, § 50-2206.

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2214. Affidavit to be filed.** — When the conditions and procedures set forth herein have been fully satisfied, and a declaration of disincorporation has been recorded in the proceedings of the county commissioners, the county recorder shall within fifteen (15) days, file with the secretary of state, an affidavit of disincorporation stating the date on which the dissolution became effective.

**History.**

I.C., § 50-2214, as added by 1971, ch. 11, § 1, p. 22.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

The phrase “set forth herein” near the beginning of the section refers to [section 50-2201 through 50-2213, Idaho Code](#).



## Chapter 23

### REORGANIZATION OF CITIES UNDER GENERAL LAWS

Sec.

50-2301. Cities organized under general incorporating act or special charter — Organization under general laws.

50-2302. Petition for organization under general laws — Election.

50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor.

50-2304. Governing body to continue in office.

50-2305. Effect of election — Officials.

50-2306. Proof of corporate existence.

50-2307. Existing rights not affected.

50-2308. Election of officers.

**§ 50-2301. Cities organized under general incorporating act or special charter — Organization under general laws.** — Any city within the state of Idaho organized under a general incorporating act or special charter may become organized as a city under the provisions of this act, and the general laws of the state of Idaho by proceedings as hereinafter provided.

**History.**

1967, ch. 429, § 445, p. 1249.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 6, inclusive, and chs. 48, 49 of tit. 50.

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**Effective Dates.**

Section 475 of S.L. 1967, ch. 429 declared an emergency. Approved April 12, 1967.

**§ 50-2302. Petition for organization under general laws — Election.**

— Upon receipt of a petition signed by registered qualified electors equal in number to twenty-five percent (25%) of the total number of voters casting ballots at the last preceding general city election, the governing body shall by resolution issued within ten (10) days after filing of said petition, submit to the qualified electors of the city the question of organizing as a city, under this chapter, and the general laws of the state of Idaho. The election shall be held on the next date authorized by section 50-405, Idaho Code, which is more than forty-five (45) days after adoption of the resolution by the city council.

**History.**

1967, ch. 429, § 446, p. 1249; am. 2009, ch. 341, § 138, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, inserted “to the qualified electors of the city,” substituted “chapter” for “act,” and deleted “at a special election to be held at the time specified therein, and within sixty (60) days after said petition is filed” from the end; and added the last sentence.

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.



**§ 50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor.** — At such election, conducted under this chapter, the proposition to be submitted to the electors shall be substantially: “Shall the proposition to organize the City of (name of city) as a city under this chapter, and the general laws of the state of Idaho be adopted?”. An election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. Immediately after, if such proposition be adopted, the county clerk shall transmit a certified statement with the date on which such proposition was adopted: to the governor; to the secretary of state; and to the county auditor of the county in which such city is located.

Upon receipt of said statement, the governor shall thereupon by public proclamation declare that such city shall cease to function under its previous organization, and shall henceforth be governed by this chapter, and the general laws of the state of Idaho.

**History.**

1967, ch. 429, § 447, p. 1249; am. 2009, ch. 341, § 139, p. 993.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2009 amendment, by ch. 341, throughout the section, substituted “chapter” for “act”; and, in the last sentence in the first paragraph, substituted “county clerk” for “clerk of said city.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

**§ 50-2304. Governing body to continue in office.** — If a majority of the votes cast shall be in favor of the city becoming a city as provided in said election, then the governing body of such city organized under special charter or general incorporating act shall continue to hold office and function as the governing body of the city with all the powers, authority and duties granted a city under the general laws of the state of Idaho thereunto pertaining and shall continue to act until the officers provided for a city by this act, and the general laws of the state of Idaho shall be elected at the next general city election succeeding the issuance of the proclamation of the governor, as herein provided.

**History.**

1967, ch. 429, § 448, p. 1249.

**STATUTORY NOTES**

**Cross References.**

Proclamation by governor, § 50-2303.

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-2305. Effect of election — Officials.** — Immediately upon the proclamation by the governor the authority of the governing body under the special charter or general incorporating act shall cease, and said officials shall have such powers and duties as are provided under this act, and the general laws of the state of Idaho.

**History.**

1967, ch. 429, § 449, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the end of the section refers to S.L. 1967, Chapter 429 which is generally compiled as chapters 1 to 3, 6 to 10, 13 to 19, and 21 to 23, title 50, Idaho Code.

**§ 50-2306. Proof of corporate existence.** — All courts within the county within which said city is situated shall take judicial notice of the corporate capacity and existence of such city, and of the fact that such city is identical with and a continuation of such city formerly organized as a city under a special charter or general incorporating act. In all other courts of the state, the corporate capacity and existence of such city may be proved by a copy of the proclamation issued by the governor declaring the same to be a city, duly authenticated and certified by the clerk of such city or the secretary of state, a copy of which proclamation shall be filed in each of said offices.

**History.**

1967, ch. 429, § 450, p. 1249.

**§ 50-2307. Existing rights not affected.** — Any city organized under the provision [provisions] of section [sections] 50-2301 through 50-2308[, Idaho Code,] shall for all purposes be deemed and taken to be, in law, the identical corporation theretofore incorporated and existing under the special charter or general incorporating act; and such reorganization shall in no wise affect or impair the title to any property owned or held by such corporation or in trust therefor, or any debts, demands, liabilities, or obligations existing in favor of or against such corporation, or any proceeding then pending, nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or to discharge any persons from any liability, civil, criminal then existing, for any violations of any such ordinance, but such ordinances, so far as the same are not in conflict with the general laws, shall be and remain in force until repealed or amended by the said city council; provided, that proceedings theretofore commenced shall, after such reorganization, be conducted in the same manner as though the change herein provided had not taken place.

**History.**

1967, ch. 429, § 451, p. 1249.

**STATUTORY NOTES**

**Compiler's Notes.**

The first and second bracketed insertions near the beginning of the section were added by the compiler to correct the enacting legislation.

The third bracketed insertion was added by the compiler to conform to the statutory citation style.

**CASE NOTES**

**Decisions Under Prior Law Provisions of City Charter.**

Former similar section did not continue in force the provisions of the Boise City charter, but is intended only to preserve property and contract

rights and ordinances. [Anderson v. Boise City, 91 Idaho 527, 427 P.2d 574 \(1967\)](#).

**§ 50-2308. Election of officers.** — If a majority of the votes cast shall be in favor of the city becoming organized under the general laws of the state of Idaho, the next general city election succeeding the issuance of said proclamation by the governor shall in all respects be conducted in the manner required for conducting elections in cities under the general laws of the state of Idaho. The officers elected at such election shall be the same as are provided in this chapter, and the governing body of the city, holding office at the time of issuance of such proclamation, shall have full power to prescribe such rules and regulations not in conflict with the general laws of the state for the holding of such election as may be necessary for carrying into effect the provisions of sections 50-2301 through 50-2308, Idaho Code.

**History.**

1967, ch. 429, § 452, p. 1249; am. 2009, ch. 341, § 140, p. 993.

**STATUTORY NOTES**

**Amendments.**

The 2009 amendment, by ch. 341, in the first sentence, substituted “under the general laws of the state of Idaho” for “as provided in sections 50-401 through 50-422, and the general laws of the state of Idaho”; in the last sentence, substituted “chapter” for “act” and deleted “with sections 50-401 through 50-422, and” following “not in conflict”; and deleted the former last sentence, which read: “In all matters pertaining to such election, the officers of said city shall have the same power, except as herein otherwise provided, as are conferred upon like officers of cities under this act, in the performance of like duties.”

**Effective Dates.**

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.





## Chapter 24

### POLICE COURTS

Sec.

50-2401 — 50-2419. [Repealed.]

**§ 50-2401 — 50-2419. Jurisdiction — Hearings — Judgments — Governing Laws — Appeals.[Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 429, §§ 453-471, p. 1249, were repealed by S.L. 1969, ch. 111, § 16, effective January 11, 1971. For transfer of jurisdiction to district courts, see § 1-103.

Idaho Code Ch. 25

• [Title 50](#)», «[Ch. 25](#)»

## Chapter 25

### UNDERGROUND CONVERSION OF UTILITIES

Sec.

50-2501. Short title.

50-2502. Definitions.

50-2503. Powers conferred.

50-2504. Basis of assessments.

50-2505. Resolution for cost and feasibility study.

50-2506. Costs and feasibility report.

50-2507. Resolution declaring intention to create district.

50-2508. Notice of resolution and hearing on protests — Contents.

50-2509. Filing and hearing of protests and requests for inclusion.

50-2510. Changes in proposed improvements or in area of district — Ordinance creating improvement district.

50-2511. Waiver of objections.

50-2512. Notice of hearing on objections to proposed assessments.

50-2513. Incorporation of assessment and bonding provisions from chapter 17, title 50, Idaho Code.

50-2514. Civil actions — Incorporation of sections 50-1725 through 50-1727, inclusive — Statute of limitations.

50-2515. Costs.

50-2516. Construction of and title to extended or converted facilities.

50-2517. Underground distribution extension or conversion costs and service connections.

50-2518. Payment to public utility — Refunds.

50-2519. Reinstallation of overhead facilities not permitted.

50-2520. No limitation of public utilities commission's jurisdiction.

50-2521. Reassessment of benefits.

50-2522. Invalidity of one provision not to affect others — Exception.

50-2523. Abatement of construction.

**§ 50-2501. Short title.** — This act shall be known and cited as the “Idaho Underground Conversion of Utilities Law.”

**History.**

**I.C., § 50-2501**, as added by 1971, ch. 212, § 1, p. 923.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Compiler’s Notes.**

The term “this act” refers to S.L. 1971, Chapter 212, which is compiled as §§ 50-2501 to 50-2523.

**§ 50-2502. Definitions.** — As used in this chapter, the following words and phrases and any variations thereof shall have the following meaning:

(1) “Communication service” means the transmission of intelligence by electrical means, including, but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals.

(2) “Convert” or “conversion” means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) “Electric or communication facilities” mean any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances. “Communication facilities” shall not include facilities used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(4) “Extension” or “extending” means any continuation, either overhead or underground, of existing distribution or transmission facilities or the construction of new electric or communication facilities which are reasonably required by prudent electrical or communication practices.

(5) “Governing body” means the board of county commissioners or mayor and council or board of directors as may be appropriate depending on whether the improvement district is located in a county or within a city.

(6) “Ordinance” shall be construed to mean resolution where the governing body properly acts by resolution and vice versa.

(7) “Overhead electric or communication facilities” mean electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) “Public utility” means any one or more, public or private persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(9) “Underground electric or communication facilities” mean electric or communication facilities located, in whole or in part, beneath the surface of the ground.

(10) A “lot” or “parcel” of land means a single tract or parcel of land containing five (5) acres or less. No single tract or parcel of property containing more than five (5) acres may be included in any district organized under this chapter, unless located within an incorporated city, without the consent of the owner or owners thereof.

Definitions in [section 50-1702, Idaho Code](#), shall be applicable to any sections of chapter 17, title 50, Idaho Code, incorporated in this chapter by reference.

**History.**

[I.C., § 50-2502](#), as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 1, p. 789.



**§ 50-2503. Powers conferred.** — The governing body of every county is hereby authorized and empowered to create local improvement districts under this chapter within the unincorporated portion of such county, and the governing body of every city is hereby authorized and empowered to create local improvement districts under this chapter within its territorial limits: to provide for the extension of distribution or transmission facilities or the conversion of existing overhead electric and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter.

**History.**

I.C., § 50-2503, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 2, p. 789.

**§ 50-2504. Basis of assessments.** — Whenever any improvement authorized to be made by any governing body by the terms of this chapter is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous and adjacent lots and land and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet, number of front feet, or other equitable basis, of such lands and lots abutting, adjoining, contiguous and adjacent thereto or included in the improvement district, and in proportion to the benefits accruing to such property by said improvements. The entire cost of the improvement may be assessed against the benefited property as herein provided or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as herein provided for shall include the cost of the improvement, the public utility cost and feasibility report, engineering and clerical service, advertising, inspection, collecting assessments, easements, interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Idaho or any county, city or town, shall not be considered as lands or property benefited by any improvements district, unless such public entity within the boundaries of any improvement district consents in writing, filed before the governing body adopts the ordinance provided for in section 50-2510, Idaho Code. The lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement, unless said consent is filed.

### **History.**

I.C., § 50-2504, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 3, p. 789.

**§ 50-2505. Resolution for cost and feasibility study.** — Any governing body may on its own initiative, or upon a petition signed by at least sixty per cent (60%) of the resident owners of property subject to assessment within such proposed improvement district requesting the creation of an improvement district as provided for in this chapter, pass a resolution by the affirmative vote of three-fourths (3/4) of all members of the governing body at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for a purpose set out in this chapter will promote the public convenience, necessity, and welfare. The resolution must state that costs and expenses will be levied and assessed upon the property benefited and further request that the appropriate public utility serving such area by overhead electric or communication facilities shall, within one hundred twenty (120) days after the receipt of the resolution, make a study of the cost of extension or conversion of its facilities. The resolution shall provide for payment of the public utility's costs and expenses associated with preparing the costs and feasibility report in the event the improvement district is not created. The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution of the governing body shall require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study. The study shall further list each lot or parcel within the proposed improvement impact area. The appropriate public utility serving such improvement district area shall, within one hundred twenty (120) days after receipt of the resolution, make a study of the costs of extension or of conversion, and shall provide the governing body and make available at its office a joint report of the results of the study.

### **History.**

I.C., § 50-2505, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 4, p. 789.

**§ 50-2506. Costs and feasibility report.** — The public utility or utilities report shall set forth an estimate of the total costs of extension or conversion. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utilities concerned on the basis of the amended district. The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six (6) months of the submission of the estimate for reasons not within the control of the utility. Should such a delay result in a significant increase in the conversion cost, new hearings shall be held on the creation of the district. In the event that a ten per cent (10%) or less increase results, only the hearing on the assessments need be held again.

**History.**

I.C., § 50-2506, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 5, p. 789.

**§ 50-2507. Resolution declaring intention to create district.** — On the filing with the clerk or any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, specifying the contribution of the governing body or others, if any, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity and welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and that the governing body will hold a hearing on the proposed improvements at which time they will consider protests filed with the governing body against the proposed improvements for the creation of the district.

**History.**

I.C., § 50-2507, as added by 1971, ch. 212, § 1, p. 923.

**§ 50-2508. Notice of resolution and hearing on protests — Contents.**

— Following the passage of the resolution in section 50-2507[, Idaho Code], the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement and any requests for inclusion in the district to be given in the manner provided in subsection (8). Such notice shall:

(1) Declare that the governing body has passed a resolution of intention to create an improvement district;

(2) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(3) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(4) State the estimated cost to the property owners, governing body and public utility;

(5) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the proportionate square footage, front footage, or other equitable basis, as specified;

(6) State the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvement, or the creation of such district or the benefit to be derived by the real property in the district, or requests to be included in such district;

(7) State that all persons desiring to be included in such district and all property owners liable to be assessed for such work and desiring to make protests shall submit, in writing, such protests or requests for inclusion to the governing body by a specified date not less than fifteen (15) days from the first day of publication of such notice.

(8) Notice shall be given as contemplated by this section in the manner specified in [section 50-1714 \[50-1713\], Idaho Code](#).

**History.**

I.C., § 50-2508, as added by 1971, ch. 212, § 1, p. 923.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in the introductory paragraph was added by the compiler to conform to the statutory citation style.

Section 50-1714, referred to in subsection (8), was repealed by S.L. 1976, ch. 160, § 1. For corresponding provision of new law, see § 50-1713.

**§ 50-2509. Filing and hearing of protests and requests for inclusion.**  
— At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvement, or the creation of such district, or the benefits to be derived by the real property in the district, and any property owner desiring to be included in such district may make a written request for inclusion. Such protests or requests must be in writing and be delivered to the clerk of the governing body not later than 5 p.m. of the last day within said period.

At time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests and requests so made, and its decisions shall be final and conclusive. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearing, it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utilities concerned, appear to affect either the cost or the feasibility of the improvement, the hearing shall be adjourned to a fixed time and place and a new cost and feasibility report shall be prepared on the basis of the contemplated changes. Notice and an opportunity to protest shall again be given on the basis of such contemplated changes.

If protests against the making of the improvement are received from the owners of more than two-thirds (2/3) of the assessable property within the proposed improvement district, the district and project shall be abandoned.

**History.**

I.C., § 50-2509, as added by 1971, ch. 212, § 1, p. 923.



**§ 50-2510. Changes in proposed improvements or in area of district — Ordinance creating improvement district.** — After the hearing has been concluded, and after all the protests and requests have been considered, the governing body may make such changes in the proposed improvements or in the area to be included in the district as it may consider desirable or necessary, providing said changes are not substantial. However, no such changes shall be made without a new costs and feasibility report being prepared, and public hearing held, if the public utilities concerned deem it necessary or such changes are determined to be substantial by the governing body.

The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project. Such ordinance shall be published in the manner provided in subsection (8) of [section 50-2509 \[50-2508\]](#), [Idaho Code](#), but need not be mailed. If an ordinance be adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of such ordinance. Such action shall be subject to the provisions of [section 50-2511](#)[, [Idaho Code](#)]. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceedings.

### **History.**

[I.C., § 50-2510](#), as added by 1971, ch. 212, § 1, p. 923.

## **STATUTORY NOTES**

### **Compiler's Notes.**

The reference to subsection (8) of section 50-2509, in the second sentence of the second paragraph of this section, should be to § 50-2508(8).

The bracketed insertion in the fourth sentence in the second paragraph was added by the compiler to conform to the statutory citation style.

**§ 50-2511. Waiver of objections.** — Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with section 50-2509[, Idaho Code,] shall be deemed to have waived any objections to the creation of the district, the making of the improvements and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in chapter 17, title 50, Idaho Code.

**History.**

I.C., § 50-2511, as added by 1971, ch. 212, § 1, p. 923.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

**§ 50-2512. Notice of hearing on objections to proposed assessments.**

— After the preparation of the aforesaid ordinance, notice of a hearing on objections to the proposed assessments shall be given. Such notice shall be given in the same manner as provided under section 50-1713, Idaho Code.

Each notice shall state the time at which the governing body will hear and consider all objections to the assessment roll by the parties aggrieved by such assessments. Such notice shall further state that the owner or owners of any property which is assessed in such assessment roll may file with the clerk of the governing body his written objections to said assessments and to the amount levied on any particular lot or parcel in relation to the benefits accruing thereon and in relation to the proper proportionate share of the total cost of the improvement. Failure to file a written objection pursuant to [section 50-2517 \[50-2509\], Idaho Code](#), shall constitute the grant of an easement for extension or conversion purposes to the district as provided in said section. The district after obtaining all easements required for the extension or conversion project shall, prior to commencement of construction, convey these easements to the utility. The time within which such objections shall be filed shall be specified in the notice but in no case shall it be less than fifteen (15) days from the date of the first publication of such notice.

The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this chapter.

**History.**

I.C., § 50-2512, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 6, p. 789.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in the third sentence in the second paragraph was added by the compiler to correct the statutory reference.

**§ 50-2513. Incorporation of assessment and bonding provisions from chapter 17, title 50, Idaho Code.** — The following sections of chapter 17, title 50, Idaho Code, are specifically incorporated herein by this reference as though set out here at length, and any amendments to said sections which are compatible with the original intent of this chapter shall be given effect. Said sections incorporated herein are as follows: Sections 50-1718 through 50-1724, inclusive, Idaho Code, and sections 50-1729 through 50-1732, inclusive, Idaho Code.

**History.**

I.C., § 50-2513, as added by 1971, ch. 212, § 1, p. 923.

**STATUTORY NOTES**

**Compiler's Notes.**

“Sections 50-1718 through 50-1724” and “sections 50-1729 through 50-1732”, cited in this section, refer to versions of those sections before they were repealed by S.L. 1976, ch. 160, § 1. For corresponding provisions of new law, see § 50-1701 et seq.

**§ 50-2514. Civil actions — Incorporation of sections 50-1725 through 50-1727, inclusive — Statute of limitations.** — Sections 50-1725 through 50-1727, inclusive, Idaho Code, are incorporated herein by this reference as though set out at length herein. Without changing the intent or effect of the incorporated sections, the following paragraph of this section shall be an additional limitation of any or all actions to test the validity of this chapter.

If an ordinance be adopted establishing the assessment or assessments pursuant to this chapter, such ordinances shall be final and conclusive against all persons, unless an action attacking the validity of any part or all of this law or any or all of the acts or matters contemplated by this law shall be commenced in a court of competent jurisdiction within thirty (30) days after the adoption of the assessment ordinance. Thereafter, any such action shall be perpetually barred and the organization of said district, the assessment levied pursuant thereto, or any other act or matter contemplated by this statute shall not be directly or collaterally questioned in any suit, action, or proceeding. Any such action shall be given preference over all civil cases pending in the courts of the state except proceedings relating to acts of eminent domain by cities and actions of forcible entry and detainer. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof invalid, inequitable or unjust shall rest upon the party who brings such suit.

### **History.**

I.C., § 50-2514, as added by 1971, ch. 212, § 1, p. 923.

## **STATUTORY NOTES**

### **Compiler's Notes.**

“Sections 50-1725 through 50-1727”, cited at the beginning of this section, refers to versions of those sections before they were repealed by S.L. 1976, ch. 160, § 1. For corresponding provisions of new law, see § 50-1718.

**§ 50-2515. Costs.** — In determining costs for an extension or conversion included in the cost and feasibility report required by section 50-2506, Idaho Code, the public utility shall be entitled to amounts included in applicable tariffs, rules or regulations filed with or promulgated by the Idaho public utilities commission or federal communications commission or federal energy regulatory commission. In the event tariffs, rules and regulations do not apply, the public utility shall be entitled to amounts sufficient to repay them for the following, computed according to the uniform system of accounts approved by the Idaho public utilities commission or other appropriate regulating agency, and in the event the public utility is not subject to regulation by governmental agencies, by the utility corporation's system of accounts then in use and in accordance with the accounting procedures of said public utility:

(1) Any and all costs including, without limitation, reasonable acquisition costs associated with obtaining new or expanded easements reasonably necessary to construct the extension or conversion. This shall include new or expanded easements to replace existing easements in those instances where technical considerations or the new facilities require new or expanded easements;

(2) If the estimated cost of constructing a conversion exceeds the recorded original cost of constructing the facilities being replaced, then the cost difference between the two (2);

(3) For extensions, the full cost of the facilities required less depreciation taken as of the date of installation;

(4) For removals, the estimated cost of removing the facilities being replaced less the salvage value of the facilities removed.

**History.**

I.C., § 50-2515, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 7, p. 789.

**STATUTORY NOTES**

**Cross References.**

Public utilities commission, § 61-201 et seq.

**Compiler's Notes.**

For more information on the federal communications commission, referred to in the first sentence in the introductory paragraph, see *<https://www.fcc.gov/>*.

For more information on the federal energy regulatory commission, referred to in the first sentence of the introductory paragraph, see *<https://www.ferc.gov/>*.



**§ 50-2516. Construction of and title to extended or converted facilities.** — The public utility concerned shall be responsible for all construction work and may contract out such of the construction work as it deems desirable. Title to the extended or converted facilities shall be at all times solely and exclusively in the public utility involved.

**History.**

I.C., § 50-2516, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 8, p. 789.

**§ 50-2517. Underground distribution extension or conversion costs and service connections.** — The public utility performing the underground distribution extension or conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. Creation of a district for the purpose of underground distribution extension or conversion shall be taken as a consent and grant of easement to the utility and shall be construed as express authority to the public utility and their respective officers, agents and employees to enter upon such lot or parcel for such purpose.

The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

**History.**

I.C., § 50-2517, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 9, p. 789.

**§ 50-2518. Payment to public utility — Refunds.** — Upon completion of the extension or conversion contemplated by this chapter, the public utility shall present the governing body with its verified bill for extension or conversion costs as computed pursuant to section 50-2515, Idaho Code, but based upon the actual cost of construction rather than the estimated cost of the facility. In no event shall the bill for extension or conversion costs presented by the public utility exceed the amount of estimated extension or conversion costs by the public utility. In the event the extension or conversion costs are less than the estimated extension or conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such times as the governing body may determine. The bill of the public utility corporation shall be paid within thirty (30) days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the facility the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the state or federal regulatory commission and as is in use at the time of the extension or conversion by the public utility involved. All rules and regulations of the utility pertaining to refund provisions for line extensions will also be applicable to an improvement district.

**History.**

I.C., § 50-2518, as added by 1971, ch. 212, § 1, p. 923; am. 1991, ch. 301, § 10, p. 789.

**§ 50-2519. Reinstallation of overhead facilities not permitted.** — Once removed pursuant to this chapter, no overhead electric or communication facilities as defined herein, shall be installed within the boundaries of the local improvement district for conversion of overhead electric and communication facilities, except as authorized herein.

**History.**

I.C., § 50-2519, as added by 1971, ch. 212, § 1, p. 923.

**§ 50-2520. No limitation of public utilities commission's jurisdiction.**

— Nothing contained in this chapter shall vest any jurisdiction over public utilities in the governing bodies. The public utilities commission of Idaho shall retain all jurisdiction now or hereafter conferred upon it by law.

**History.**

I.C., § 50-2520, as added by 1971, ch. 212, § 1, p. 923.

**STATUTORY NOTES**

**Cross References.**

Public utilities commission, § 61-201 et seq.

**§ 50-2521. Reassessment of benefits.** — In all cases of assessments for improvements under this chapter against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the chapter provisions, or laws governing such assessments, the governing body shall be, and they are hereby, authorized to reassess such special taxes or assessments and to enforce their collection, in accordance with the provisions of law existing at the time the reassessment is made. But no mistake, in description of the property, or the name of the owner, shall be held to affect any assessment or any lien created thereby under the provisions of this chapter, or any law of this state, unless such mistake or error renders it impossible to identify the property so assessed.

When for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the cost and expenses of the improvement made and enjoyed by owners of property in any local improvement district where the same is made, it shall be lawful, and the governing body is hereby directed and authorized to make reassessments on all property in said local improvement district sufficient to pay for such improvements, such reassessment to be made and collected in accordance with the provisions of the law existing at the time of its levy.

**History.**

I.C., § 50-2521, as added by 1971, ch. 212, § 1, p. 923.

**§ 50-2522. Invalidity of one provision not to affect others — Exception.** — If any section or provision of this chapter be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of this chapter as a whole, or of any section or provision hereof, which is not specifically so adjudicated unconstitutional or invalid; provided, however, if any section or provision of this chapter concerning the payment to the public utilities shall be adjudged unconstitutional or invalid for any reason in such a way that the payment to the public utilities or the creation of the funds for that purpose is adjudged to be invalid or unconstitutional then such invalidity or unconstitutionality shall invalidate this chapter in its entirety and to this end and in this event the provisions of this chapter are declared to be nonseverable.

**History.**

I.C., § 50-2522, as added by 1971, ch. 212, § 1, p. 923.

**§ 50-2523. Abatement of construction.** — If an improvement district is established pursuant to this chapter, the public utility corporations involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

**History.**

I.C., § 50-2523, as added by 1971, ch. 212, § 1, p. 923.



Idaho Code Ch. 26

• [Title 50](#)», « [Ch. 26](#) »

## Chapter 26

### BUSINESS IMPROVEMENT DISTRICTS

Sec.

50-2601. Authorization — Purposes — Special assessments.

50-2602. Definitions.

50-2603. Initiation petition — Contents.

50-2604. Resolution of intention to establish — Contents — Hearing.

50-2605. Notice of hearing.

50-2606. Hearings.

50-2607. Change of boundaries.

50-2608. Special assessments — Classification of businesses.

50-2609. Special assessments — Same basis or rate for classes not required  
— Factors as to parking facilities.

50-2610. Ordinance to establish — Adoption — Contents.

50-2611. Use of revenue — Contracts to administer operation of district.

50-2612. Use of assessment proceeds restricted.

50-2613. Collection of assessments.

50-2614. Changes in assessment rates.

50-2615. Benefit zones — Authorized — Rates.

50-2616. Benefit zones — Establishment, modification and  
disestablishment of district provisions and procedure to be followed.

50-2617. Exemption period for new businesses.

50-2618. Disestablishment of district — Hearing.

50-2619. Disestablishment of district — Assets and liabilities.

50-2620. Bids required — Monetary amount.

50-2621. Computing cost of improvement for bid requirement.

50-2622. Existing laws not affected — Chapter supplemental — Purposes may be accomplished in conjunction with other methods.

50-2623. Disclosure requirement prior to lease or sale of property.

50-2624. Notification in the event of lease or sale.

**§ 50-2601. Authorization — Purposes — Special assessments.** — The legislature hereby authorizes all incorporated cities:

(1) To establish business improvement districts, hereafter referred to as district or districts, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the district;
- (b) Physical improvement and decoration of any public space in the district;
- (c) Promotion of public events which are to take place on or in public places in the district;
- (d) The acquisition and operation of transportation services to promote retail trade activities within the district; and
- (e) The general promotion of retail trade activities in the district.

(2) To levy special assessments on all businesses or business property within the district and specially benefited by a business improvement district to pay the damages or costs incurred therein as provided in this chapter.

**History.**

**I.C., § 50-2601**, as added by 1980, ch. 192, § 1, p. 423; am. 1998, ch. 253, § 1, p. 823.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**§ 50-2602. Definitions.** — As used in this chapter:

- (1) “Business” means all types of business, including vacant structures, common areas, and lots within the district, and including professions.
- (2) “Legislative authority” means the legislative authority of any city.

**History.**

**I.C., § 50-2602**, as added by 1980, ch. 192, § 1, p. 423; am. 1988, ch. 180, § 1, p. 314.

**§ 50-2603. Initiation petition — Contents.** — For the purpose of establishing a business improvement district, an initiation petition may be presented to the legislative authority having jurisdiction of the area in which the proposed business improvement district is to be located. The initiation petition shall contain the following:

- (1) A description of the boundaries of the proposed district;
- (2) The proposed uses and projects to which the proposed special assessment revenues shall be put and the total estimated cost thereof; and
- (3) The estimated rate of levy of special assessment with a proposed breakdown by class of business if such classification is to be used.

The initiating petition shall also contain the signatures of the persons who operate businesses or own business property in the proposed district which would pay fifty percent (50%) of the proposed special assessments.

**History.**

**I.C., § 50-2603**, as added by 1980, ch. 192, § 1, p. 423; am. 1998, ch. 253, § 2, p. 823.

**§ 50-2604. Resolution of intention to establish — Contents — Hearing.** — The legislative authority, after receiving a valid initiation petition, shall adopt a resolution of intention to establish a district. The resolution shall state the time and place of a hearing to be held by the legislative authority to consider establishment of a district and shall restate all the information contained in the initiation petition regarding boundaries, projects and uses, and estimated rates of assessment.

**History.**

I.C., § 50-2604, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2605. Notice of hearing.** — Notice of a hearing held under the provisions of this chapter shall be given by:

(1) One (1) publication of the resolution of intention in a newspaper of general circulation in the city; and

(2) Mailing a complete copy of the resolution of intention to each business in the proposed, or established district. Publication and mailing shall be completed at least ten (10) days prior to the time of the hearing.

**History.**

I.C., § 50-2605, as added by 1980, ch. 192, § 1, p. 423.



**§ 50-2606. Hearings.** — Whenever a hearing is held under this chapter, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses in the proposed district which would pay a majority of the proposed special assessments.

**History.**

I.C., § 50-2606, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2607. Change of boundaries.** — If the legislative authority decides to change the boundaries of the proposed district, the hearing shall be continued to a time at least fifteen (15) days after such decision and notice shall be given as prescribed in section 50-2605, Idaho Code, showing the boundary amendments, but no resolution of intention is required.

**History.**

I.C., § 50-2607, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2608. Special assessments — Classification of businesses.** — For purposes of the special assessments to be imposed pursuant to this chapter, the legislative authority may make a reasonable classification of businesses, giving consideration to various factors, including the degree of benefit received from parking only.

**History.**

I.C., § 50-2608, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2609. Special assessments — Same basis or rate for classes not required — Factors as to parking facilities.** — The special assessments need not be imposed on different classes of business, as determined pursuant to section 50-2608, Idaho Code, on the same basis or the same rate: Provided, however, that the special assessments imposed for the purpose of the acquisition, construction or maintenance of parking facilities for the benefit of the district shall be imposed on the basis of benefit determined by the legislative authority after giving consideration to the total cost to be recovered from the businesses upon which the special assessment is to be imposed, the total area within the boundaries of the business improvement district, the assessed value of the land and improvements within the district, the total business volume generated within the district and within each business, and such other factors as the legislative authority may find and determine to be a reasonable measure of such benefit.

**History.**

I.C., § 50-2609, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2610. Ordinance to establish — Adoption — Contents.** — If the legislative authority, following the hearing, decides to establish the proposed district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) The description of the boundaries of such district;

(4) A statement that the businesses in the district established by the ordinance shall be subject to the provisions of the special assessments authorized by [section 50-2601, Idaho Code](#);

(5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business, if such classification is used;

(6) A statement that a business improvement district has been established; and

(7) The uses to which the special assessment revenue shall be put; provided, however, that such use shall conform to the use as declared in the initiation petition presented pursuant to [section 50-2603, Idaho Code](#).

**History.**

[I.C., § 50-2610](#), as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2611. Use of revenue — Contracts to administer operation of district.** — The legislative authority of each city shall have sole discretion as to how the revenue derived from the special assessments is to be used within the scope of the purposes; however, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

The legislative authority may contract with a chamber of commerce or other similar business association operating primarily within the boundaries of the legislative authority to administer the operation of a business improvement district, including any funds derived pursuant thereto; provided, that such administration must comply with all applicable provisions of law including this chapter, with all county or city resolutions and ordinances, and with all rules or procedures lawfully imposed by the state controller or other state agencies.

#### **History.**

**I.C., § 50-2611**, as added by 1980, ch. 192, § 1, p. 423; am. 1994, ch. 180, § 94, p. 420; am. 2003, ch. 32, § 26, p. 115.

### **STATUTORY NOTES**

#### **Cross References.**

State controller, § 67-1001 et seq.

#### **Effective Dates.**

Section 241 of S.L. 1994, ch 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to the state controller [1994 S.J.R. No 109, p. 1493] was adopted at the general election held November 8, 1994. Since such amendment was adopted, the amendment to this section by § 10, of S.L. 1994, ch. 180 became effective January 2, 1995.

**§ 50-2612. Use of assessment proceeds restricted.** — The special assessments levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

**History.**

I.C., § 50-2612, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2613. Collection of assessments.** — Collections of assessments imposed pursuant to this chapter shall be made in the manner to be determined by the concerned legislative authority.

**History.**

I.C., § 50-2613, as added by 1980, ch. 192, § 1, p. 423.



**§ 50-2614. Changes in assessment rates.** — Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the district, by ordinance adopted after a hearing before the legislative authority.

The legislative authority shall adopt a resolution of intention to change the rate or additional rate of special assessment at least fifteen (15) days prior to the hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing; provided, that proceedings to change the rate or impose an additional rate of special assessments shall terminate if protest is made by businesses in the proposed district which would pay a majority of the proposed increase or additional special assessments.

**History.**

I.C., § 50-2614, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2615. Benefit zones — Authorized — Rates.** — The legislative authority may, for each of the purposes set out in section 50-2601, Idaho Code, establish and modify one or more separate benefit zones based upon the degree of benefit derived from the purpose and may impose a different rate of special assessment within each such benefit zone.

**History.**

I.C., § 50-2615, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2616. Benefit zones — Establishment, modification and disestablishment of district provisions and procedure to be followed. —**

All provisions of this chapter applicable to establishment or disestablishment of a district also apply to the establishment, modification, or disestablishment of benefit zones pursuant to section 50-2615, Idaho Code. The establishment or the modification of any such zone shall follow the same procedure as provided for the establishment of a business improvement district and the disestablishment shall follow the same procedure as provided for disestablishment of a district.

**History.**

I.C., § 50-2616, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2617. Exemption period for new businesses.** — Businesses established after the creation of a district within the district shall be exempted from the special assessments imposed pursuant to this chapter from the date of first occupancy until the next billing date prescribed by the legislative authority.

**History.**

I.C., § 50-2617, as added by 1980, ch. 192, § 1, p. 423; am. 2003, ch. 204, § 1, p. 544.

**§ 50-2618. Disestablishment of district — Hearing.** — (1) The legislative authority may disestablish a district by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the district at least fifteen (15) days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

(2) The legislative authority shall disestablish a district if the businesses in the district which pay a majority of the assessments, petition in writing for such disestablishment.

**History.**

I.C., § 50-2618, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2619. Disestablishment of district — Assets and liabilities. —**

Upon disestablishment of a district, any proceeds of the special assessments, or assets acquired with such proceeds, or liabilities incurred as a result of the formation of such district, shall be subject to disposition as the legislative authority shall determine; provided, however, any liabilities, either current or future, incurred as a result of action taken to accomplish the purposes of section 50-2601, Idaho Code, shall not be an obligation of the general fund or any special fund of the city, but such liabilities shall be provided for entirely from available revenue generated from the projects or facilities authorized by section 50-2601, Idaho Code, or from special assessments on the property specially benefited within the district.

**History.**

I.C., § 50-2619, as added by 1980, ch. 192, § 1, p. 423.

**§ 50-2620. Bids required — Monetary amount.** — Any city authorized by this chapter to establish a business improvement district shall conduct its purchasing activities in accordance with the provisions of chapter 28, title 67, Idaho Code.

**History.**

**I.C., § 50-2620**, as added by 1980, ch. 192, § 1, p. 423; am. 2005, ch. 213, § 22, p. 637.

**§ 50-2621. Computing cost of improvement for bid requirement. —**

The cost of the improvement for the purposes of this chapter shall be aggregate of all amounts to be paid for the labor, materials and equipment on one (1) continuous or interrelated project where work is to be performed simultaneously or in near sequence. Breaking an improvement into small units for the purposes of avoiding the minimum dollar amount prescribed in chapter 28, title 67, Idaho Code, is contrary to public policy and is prohibited.

**History.**

I.C., § 50-2621, as added by 1980, ch. 192, § 1, p. 423; am. 2005, ch. 213, § 23, p. 637.



**§ 50-2622. Existing laws not affected — Chapter supplemental — Purposes may be accomplished in conjunction with other methods. —**

This chapter providing for business improvement districts shall not be deemed or construed to affect any existing act, or any part thereof, relating to special assessments or other powers of counties, and cities, but shall be supplemental thereto and concurrent therewith.

The purposes and functions of business improvement districts as set forth by the provisions of this chapter may be accomplished in part by the establishment of a district pursuant to this chapter and in part by any other method otherwise provided by law, including provisions for local improvements.

**History.**

I.C., § 50-2622, as added by 1980, ch. 192, § 1, p. 423.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 1980, ch. 192 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**§ 50-2623. Disclosure requirement prior to lease or sale of property.**

— Prior to leasing or selling property located within a business improvement district, property owners are required to provide written disclosure to prospective lessees or purchasers that the subject property is located within a business improvement district and that the lessee or purchaser may be responsible for the payment of special assessments to the legislative authority. The written disclosure shall be a statement by the property owner and shall not be construed to be a statement made by any agent representing the property owner. No agent of the property owner shall be authorized to make such a disclosure as provided in this chapter or to verify the same.

**History.**

I.C., § 50-2623, as added by 2003, ch. 204, § 2, p. 544.

**§ 50-2624. Notification in the event of lease or sale.** — (1) Within thirty (30) days of the lease or sale of property located within a business improvement district, the lessor of the subject property in the case of a lease, or the seller of the subject property in the case of a sale, is required to submit a written copy of the notification of the lease or sale and the identity of the lessee or purchaser, to the legislative authority.

(2) The disclosures required by the provisions of this chapter shall be set forth in the following disclosure form. An alternative form may be utilized provided that the terms of such form shall be substantially similar to the terms set forth herein: Business Improvement District Disclosure Purchaser or lessee has received notification that the property purchased or leased is located within a business improvement district. Purchaser or lessee understands that they may be responsible to pay special assessments to the legislative authority responsible for the business improvement district.

I/we acknowledge receipt of a copy of this disclosure statement.

Seller/Lessor: Buyer/Lessee: :ll,1680 .....

Date: :ll,1680 Date: .....

:ll,1680 .....

Date: :ll,1680 Date: .....

**History.**

I.C., § 50-2624, as added by 2003, ch. 204, § 3, p. 544.



## Chapter 27

# MUNICIPAL INDUSTRIAL DEVELOPMENT PROGRAM

Sec.

50-2701. Finding and declaration of necessity.

50-2702. Definitions.

50-2703. Public corporations — Creation, dissolution.

50-2704. Board of directors of a public corporation.

50-2705. Public corporations — Directors.

50-2706. Public corporations — Limitations.

50-2707. Public corporations — Audit by state.

50-2708. Public corporations — Powers.

50-2709. Reporting and assistance.

50-2710. Revenue bonds — Provisions.

50-2711. Investment of funds.

50-2712. Revenue bonds — Refunding.

50-2713. Trust agreements.

50-2714. Commingling of bond proceeds or revenues with municipal funds prohibited.

50-2715. Subleases and assignment.

50-2716. Determination of rent.

50-2717. Proceedings in the event of default.

50-2718. Publication of proceedings — Contest period.

50-2719. Tax exemption.

50-2720. Taxation.

50-2721. Bonds eligible for investment.

50-2722. Conveyance of title to user.

50-2723. Construction — Supplemental nature of chapter.

**§ 50-2701. Finding and declaration of necessity.** — The legislature hereby finds and declares that this state urgently needs to promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry to the state; protect and enhance the quality of natural resources and the environment; and promote the products and conservation of energy.

**History.**

I.C., § 50-2701, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2702. Definitions.** — As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) “Board of directors” means the board of directors of a public corporation.

(2) “Construction” or “construct” means construction and acquisition, whether by devise, purchase, gift, lease or otherwise.

(3) “Facilities” mean land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxillary [auxiliary] facilities.

(4) “Financing document” means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement or other agreement for the purpose of providing funds to pay or secure, debt service on revenue bonds.

(5) “Improvement” means reconstruction, remodeling, rehabilitation, extension, and enlargement, and “to improve” means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(6) “Industrial development facilities” mean manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation and energy facilities, excluding facilities to transmit, distribute or produce electrical energy. Recreation facilities, as used in this chapter, shall be limited to ski areas. However, funds raised pursuant to this chapter for ski areas shall be limited in application to the acquisition and preparation of land, acquisition and construction of ski lifts, lighting of ski slopes, construction of access and interior roadways, parking lots, maintenance facilities and maintenance equipment, administrative facilities, and utilities.

(7) “Municipality” means a city or county of this state.

(8) “Ordinance” means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance or otherwise.

(9) “Project costs” mean costs of:



(a) Acquisition, construction and improvement of any facilities included in an industrial development facility;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of an industrial development facility, including costs of studies assessing the feasibility of an industrial development facility, and including all administrative costs incurred before the issuance of the bonds;

(c) Finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement;

(d) Interest during construction and interest on revenue bonds issued to finance such facility to a date no later than six (6) months subsequent to the estimated date of completion, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this section.

(10) “Revenue bond” means a nonrecourse revenue bond, nonrecourse revenue note or other nonrecourse revenue obligation issued for the purpose of financing an industrial development facility on an interim or permanent basis.

(11) “User” means any individual, partnership, copartnership, firm, company, corporation, investor-owned utility, association, joint stock company, trust, estate, or any other legal entity, or their legal representatives, agents, or assigns acting as lessee, purchaser, mortgagor or borrower under a financing document and may include a party who transfers the right of use and occupancy to another party by lease, sublease or otherwise.

### **History.**

I.C., § 50-2702, as added by 1982, ch. 119, § 1, p. 326.

## **STATUTORY NOTES**

### **Compiler’s Notes.**

The bracketed word “auxiliary” in subsection (3) was inserted by the compiler to correct the spelling.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2703. Public corporations — Creation, dissolution.** — (1) For the purpose of facilitating economic development and employment opportunities in the state of Idaho through the financing of the project costs of industrial development facilities, a municipality may enact an ordinance creating a public corporation for the purposes authorized in this chapter. The ordinance creating the public corporation shall approve a charter for the public corporation containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter shall contain in substance the limitations set forth in section 50-2706, Idaho Code. In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the public corporation and for all other purposes, the public corporation shall be conclusively presumed to have been duly created and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the public corporation by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality shall be admissible in evidence in any suit, action or proceeding.

(2) A public corporation created by a municipality pursuant to this chapter may be dissolved by the municipality if the public corporation:

- (a) Has no property to administer other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and
- (b) All its outstanding obligations have been satisfied.

Such a dissolution shall be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs or activities of a public corporation, including termination of the public corporation if contracts entered into by the public corporation are not impaired. Any net earnings of a public corporation, beyond those necessary for retirement of indebtedness incurred by it, shall not inure to the benefit of any person other than the

granting municipality. Upon dissolution of a public corporation, title to all property owned by the public corporation shall vest in the municipality.

**History.**

I.C., § 50-2703, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2704. Board of directors of a public corporation.** — The ordinance creating a public corporation shall include provisions establishing a board of directors to govern the affairs of the corporation, what constitutes a quorum of the board of directors, and how the corporation shall conduct its affairs. The board of directors will consist of no less than three (3) members.

**History.**

I.C., § 50-2704, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2705. Public corporations — Directors.** — It shall be illegal for a director, officer, agent or employee of a corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services or materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a misdemeanor.

**History.**

I.C., § 50-2705, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Cross References.**

Punishment for misdemeanor when none specified, § 18-113.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2706. Public corporations — Limitations.** — No municipality may give or lend any money or property in aid of a public corporation chartered under the provisions of this chapter; provided, however, that a municipality may accept grants from the United States government or any agency thereof and apply grants in connection with industrial development facilities. The municipality that creates a public corporation shall annually review any financial statements of the public corporation and at all times shall have access to the books and records of the public corporation. No public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county or city within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued pursuant to this chapter unless the issuer makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government. Revenue bonds issued by a corporation under this chapter shall not be considered to constitute a debt of the state, of the municipality or of any other municipal corporation, quasi-municipal corporation, subdivision or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, any money and other property received from private sources. Each revenue bond shall contain on its face statements to the effect that:

(a) Neither the state, the municipality or any other municipal corporation, quasi-municipal corporation, subdivision or agency of the state is obligated to pay the principal or the interest thereon;

(b) No tax funds or governmental revenue may be used to pay the principal or interest thereon; and

(c) Neither any or all of the faith and credit nor the taxing power of the state, the municipality or any other municipal corporation, quasi-municipal

corporation, subdivision or agency thereof is pledged to the payment of the principal of or the interest on the revenue bond.

A public corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds or from the proceeds of revenue bonds. A public corporation established under the terms of this chapter constitutes an authority and an instrumentality of the municipality which creates it (within the meaning of those terms in the regulations of the United States treasury and the rulings of the Internal Revenue Services prescribed pursuant to [section 103 of the Internal Revenue Code of 1954](#), as amended) and may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The public corporation is not a municipal corporation within the meaning of the state constitution and the laws of the state or a political subdivision within the meaning of the state constitution and the laws of the state, including without limitation [article VIII, section 4, of the Idaho constitution](#). A municipality shall not delegate to a public corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain and the police power.

### **History.**

[I.C., § 50-2706](#), as added by 1982, ch. 119, § 1, p. 326.

## **STATUTORY NOTES**

### **Federal References.**

[Section 103 of the Internal Revenue Code of 1954](#), referred to in this section, is compiled as [26 U.S.C.S. § 103](#).

### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

### **Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: "This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law."



H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2707. Public corporations — Audit by state.** — The finances of any public corporation are subject to examination by the legislative council.

**History.**

**I.C., § 50-2707**, as added by 1982, ch. 119, § 1, p. 326; am. 1993, ch. 327, § 24, p. 1186.

**STATUTORY NOTES**

**Cross References.**

Legislative council, § 67-427 et seq.

**Compiler's Notes.**

Section 41 of S.L. 1993, ch. 327 read: "All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose."

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: "This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law."

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho **Const., Art. VIII, § 5** was approved by the electorate November 2, 1982.

**§ 50-2708. Public corporations — Powers.** — (1) A public corporation created under this chapter has the following powers with respect to industrial development facilities together with all powers incidental thereto or necessary for the performance thereof:

- (a) To locate, construct and maintain one or more industrial development facilities;
- (b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including renewal of the lease or options to purchase, as its board of directors considers advisable and not in conflict with this chapter;
- (c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for such purchase price and upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;
- (d) To make loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any industrial development facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;
- (e) To issue revenue bonds for the purpose of financing all or part of the project cost of any industrial development facility and to secure the payment of the revenue bonds as provided in this chapter. Issuance of revenue bonds for facilities pursuant to this chapter shall not preclude the issuance of additional revenue bonds in connection with the same facility. Any subsequent bond issue shall recognize and protect any prior pledge made for any prior issue of revenue bonds.
- (f) As security for the payment of the principal of and interest on any revenue bonds, issued, and any agreements made in connection therewith, to mortgage, pledge or otherwise encumber any or all of its industrial development facilities or any part or parts thereof, whether then

owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the public corporation, to secure any loan made by the public corporation and to pledge the revenues and receipts therefrom;

(g) To sue and be sued, complain and defend in its corporate name;

(h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner produced;

(j) Subject to the limitations of [section 50-2706, Idaho Code](#), to borrow money, accept grants from, or contract with any local, state or federal governmental agency or with any financial, public or private corporation;

(k) To make and alter bylaws not inconsistent with this chapter for the administration and regulation of the affairs of the corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To expend surplus fees or charges collected from users or prospective users of industrial development facilities for construction of public facilities including, but not limited to, sidewalks, landscaping, water and sewer systems, roads, extension of utility services and roads, but such expenditures shall be limited to projects which are within the limits and purposes of this chapter; and to conduct or contract for studies to determine features needed by local governments to foster economic development;

(n) To execute financing documents incidental to the powers enumerated in this section.

(2) No public corporation created under this chapter may operate any industrial development facility as a business other than as lessor, seller or lender. The purchase and holding of mortgages, deeds of trust or other security interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

(3) No public corporation may exercise any of the powers authorized in this section or issue any revenue bonds with respect to any industrial development facility unless the industrial development facility is located wholly within the boundaries of the municipality under whose auspices the public corporation is created. In cases involving proposed energy or solid waste disposal facilities which may be located partially or wholly outside the boundaries of the creating municipality, no public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and planning and zoning approval by the county or city within whose planning jurisdiction the proposed industrial development facility lies.

**History.**

I.C., § 50-2708, as added by 1982, ch. 119, § 1, p. 326; am. 1986, ch. 29, § 1, p. 82.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**CASE NOTES**

**Cited** *Waters Garbage v. Shoshone County*, 138 Idaho 648, 67 P.3d 1260 (2003).

**§ 50-2709. Reporting and assistance.** — (1) Within ten (10) days after the issuance of any revenue bonds, each public corporation shall record the following and any additional information with the department of finance, bureau of securities:

- (a) The name of the issuer;
- (b) The proposed amount of the bonds;
- (c) A short description of the facilities constituting the project and of the person or persons on behalf of whom the issuer issued the bonds; and
- (d) The amount of permanent employment reasonably projected to be created by the existence of each project.

(2) The division of economic and community affairs shall report annually to the legislature and the governor on the amount of revenue bonds authorized and issued, the amount of capital investment undertaken under this chapter and the amount of permanent employment reasonably related to the existence of such industrial development facilities.

(3) The division of economic and community affairs shall provide such advice and assistance to public corporations or municipalities which have created or may wish to create corporations, as the public corporations or municipalities request and the division of economic and community affairs considers appropriate.

### **History.**

I.C., § 50-2709, as added by 1982, ch. 119, § 1, p. 326.

## **STATUTORY NOTES**

### **Compiler's Notes.**

For more information on the securities bureau of the Idaho department of finance, see <http://www.finance.idaho.gov/Securities/Securities.aspx>.

The division of economic and community affairs, referred to in subsections (2) and (3), was abolished by S.L. 1985, ch. 160, which established the department of commerce. See § 67-4701 et seq.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2710. Revenue bonds — Provisions.** — (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, including fluctuating or variable rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form, whether serial bonds or term bonds or any combination of either, the manner of execution of the revenue bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest and the duration of the bonds, not to exceed forty (40) years. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or coupons ceases to be an officer before the delivery of the revenue bonds, such signature shall for all purposes have the same effect as if he had remained in office until delivery. The revenue bonds may be issued in coupon or registered form or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at a public or private sale for such price and bearing interest at such fixed or variable rates as may be determined by the board of directors and with the consent of the user. The bonds may bear interest at any rate or rates per annum without regard to any interest rate limitation appearing in any other law.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost or for the making of a sum in the amount of all or part of the project cost of the industrial development facility for which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the



issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities that are exchangeable for other revenue bonds when the other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and all interest coupons applicable thereto are negotiable instruments within the meaning of article 8, title 28, Idaho Code, the uniform commercial code.

**History.**

I.C., § 50-2710, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Compiler's Notes.**

The reference to the uniform commercial code, in subsection (7), is obsolete. Negotiable instruments are now defined and governed by article 3 of the uniform commercial code. See § 28-3-104.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: "This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law."

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2711. Investment of funds.** — An issuer issuing revenue bonds hereunder shall not commingle any funds received from the sale thereof with any other funds in its possession or under its control but may invest any such funds in the manner and in such obligations as shall be provided for in the bond indenture pursuant to which the revenue bonds are issued.

**History.**

I.C., § 50-2711, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2712. Revenue bonds — Refunding.** — Each public corporation may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any revenue bonds issued for an industrial development facility under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and commissions, service fees and other expenses necessary to be paid in connection with the refunding bond issue, and if considered advisable by the public corporation, for the additional purpose of financing improvements, extension or enlargements to the industrial development facility or another industrial development facility. The issuance of the revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the public corporation in respect to the same shall be governed by this chapter insofar as applicable.

Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same project or separate projects or for any other purpose hereunder, and regardless of whether or not the revenue bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

**History.**

I.C., § 50-2712, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2713. Trust agreements.** — Any bonds issued under this chapter may be secured by a trust agreement between the public corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale or loan revenues to be received from a lessee or purchaser of or borrower with respect to an industrial development facility for the payment of principal of and interest on and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond holders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvements, maintenance, use, repair, operation and insurance of the industrial development facility for which the bonds are authorized, and the custody, safeguarding and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the corporation. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the public corporation considers reasonable and proper for the security of the bondholders which are not in conflict with this chapter.

**History.**

I.C., § 50-2713, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2714. Commingling of bond proceeds or revenues with municipal funds prohibited.** — No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility required or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with funds of the municipality creating the public corporation.

**History.**

I.C., § 50-2714, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.



**§ 50-2715. Subleases and assignment.** — A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of an industrial development facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract or loan agreement and the use of the industrial development facility shall be consistent with the purposes of this chapter.

**History.**

I.C., § 50-2715, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2716. Determination of rent.** — Before entering into a lease, sale contract or loan agreement with respect to any industrial development facility, the public corporation shall determine that there are sufficient revenues to pay:

(a) The principal of and the interest on the revenue bonds proposed to be issued to finance the industrial development facility;

(b) The amount necessary to be paid each year into any reserve funds which the public corporation considers advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the industrial development facility; and

(c) Unless the terms of the lease, sale contract or loan agreement provide that the lessee or contracting party shall maintain the industrial development facility and carry all proper insurance with respect thereto, the estimated cost of maintaining the industrial facility in good repair and keeping it properly insured.

**History.**

I.C., § 50-2716, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2717. Proceedings in the event of default.** — The proceedings authorizing any revenue bonds under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments and loan repayments, and to apply the revenues from the industrial development facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this chapter to secure revenue bonds issued under this chapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the industrial development facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder.

**History.**

I.C., § 50-2717, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2718. Publication of proceedings — Contest period.** — The resolution authorizing the issuance of any revenue bonds hereunder and the execution of an indenture as security therefor shall be published one (1) time in a newspaper of general circulation in the municipality. Any such indenture, or other instrument authorized in such resolution to be executed, may be incorporated as an exhibit to such resolution but need not be published as part of the resolution. For a period of thirty (30) days from the date of such publication any person in interest may file suit in any court of competent jurisdiction to contest the regularity, formality or legality of the proceedings authorizing the revenue bonds, or the legality of such resolution and its provisions or of the revenue bonds to be issued pursuant thereto and the provisions securing the revenue bonds. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the revenue bonds or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the revenue bonds and the provisions for their payment shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matters.

**History.**

I.C., § 50-2718, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2719. Tax exemption.** — Any bonds issued under the provisions of this chapter, their transfer, and income therefrom, including any interest paid or payable thereon and profit made on the sale thereof, shall be exempt at all times from all taxation in the state of Idaho.

**History.**

I.C., § 50-2719, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2720. Taxation.** — During any period that property acquired pursuant to this act is leased by a municipalaity [municipality] or public corporation as a lessor, or title thereto is retained by a municipality or public corporation under an installment purchase contract, taxes shall be payable to the same extent as if it were owned by such lessee or installment purchaser and such taxes shall be paid by such lessee or installment purchaser.

**History.**

I.C., § 50-2720, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the beginning of the section refers to S.L. 1982, Chapter 119, which is compiled as §§ 50-2701 to 50-2723.

The bracketed word “[municipality]” near the beginning of the section was inserted by the compiler to correct a misspelling in the enacting legislation.

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2721. Bonds eligible for investment.** — The state of Idaho and all counties, cities, port districts and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any revenue bonds issued pursuant to the provisions of this chapter.

**History.**

I.C., § 50-2721, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.

**§ 50-2722. Conveyance of title to user.** — At or prior to the time the principal of, interest and premium, if any, on any revenue bonds issued hereunder to provide a particular project have been fully paid, the public corporation may execute such deeds and conveyances as are necessary and required to convey its rights, title and interest in such project to any user, provided that if such conveyance is made prior to when the revenue bonds are fully paid, the public corporation has determined that adequate provision has been made for the payment of the principal of, interest and premium, if any, on the bonds as they become due.

**History.**

I.C., § 50-2722, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.



**§ 50-2723. Construction — Supplemental nature of chapter.** — This chapter supplements and neither restricts nor limits any powers which a municipality or presently authorized corporation might otherwise have under any laws of this state.

**History.**

I.C., § 50-2723, as added by 1982, ch. 119, § 1, p. 326.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1982, ch. 119 read: “This act shall be in full force and effect on and after the date of adoption of house joint resolution no. 17 by the electorate of the state of Idaho as required by law.”

H.J.R. 17 (S.L. 1982, p. 933) which proposed an amendment to Idaho Const., Art. VIII, § 5 was approved by the electorate November 2, 1982.



Chapter 28  
IDAHO PRIVATE ACTIVITY BOND CEILING ALLOCATION  
ACT

Sec.

50-2801. Definitions.

50-2802. Finding and declaration of necessity.

50-2803. Allocation formula.

50-2804. Authority of the governor.

50-2805. Miscellaneous.

**§ 50-2801. Definitions.** — As used in sections 50-2801 through 50-2805, Idaho Code:

(1) “Bond” means any obligation for which an allocation of the volume cap is required by the code.

(2) “Certificates” mean mortgage credit certificates described in section 25 of the code.

(3) “Code” means the Internal Revenue Code of 1986, as amended, and any related treasury regulations.

(4) “Executive order” means the executive order or other administrative action of the governor pursuant to [section 50-2804, Idaho Code](#), and any amendments thereto.

(5) “Governmental unit” means (i) any county, city or port district, (ii) any public corporation created pursuant to [section 50-2703, Idaho Code](#), or other entity acting on behalf of one or more counties, cities, or both, (iii) the state, or (iv) any other entity authorized to issue bonds.

(6) “Project” means the facility or facilities to be financed in whole or in part with the proceeds of the bonds, or a program in which the proceeds of the bonds are used directly or indirectly to finance loans to individuals for educational expenses.

(7) “State” means the state of Idaho, any of its agencies, and any of its institutions of higher education.

(8) “State ceiling” means the ceiling for the state as computed under section 146(d) of the code.

(9) “Volume cap” means the volume cap for the state as computed under section 146 of the code.

(10) “Year” means each calendar year beginning calendar year 1987.

### **History.**

[I.C., § 50-2801](#), as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 1, p. 959.

## STATUTORY NOTES

### **Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

### **Federal References.**

The reference to section 25 of the code, in subsection (2), is to **section 25 of the Internal Revenue Code**, codified as **26 USCS § 25**.

The Internal Revenue Code of 1986, referred to in subsection (3) of this section, is compiled throughout Title **26 of the United States Code**. **Section 146** of the code, referred to in subsections (8) and (9), is compiled as **26 USCS § 146**.

**§ 50-2802. Finding and declaration of necessity.** — The legislature hereby finds and declares that the Tax Reform Act of 1986 imposes an annual state ceiling on the amount of bonds or certificates that may be issued, the interest on which is excludable from gross income for purposes of federal income taxation; that section 146(e)(1) of the code provides that the legislature may enact a different formula for allocating the state ceiling among the governmental units different from the formula contained in the code; and that a different formula is necessary to allocate the state ceiling by the least complicated method possible and to insure an efficient use of the state ceiling.

**History.**

I.C., § 50-2802, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 2, p. 959.

**STATUTORY NOTES**

**Federal References.**

The Tax Reform Act of 1986, referred to in this section, is compiled throughout Title 26 of the United States Code.

Section 146(e)(1) of the code, referred to near the middle of this section, is compiled as 26 USCS § 146(e)(1).

**§ 50-2803. Allocation formula.** — The entire state ceiling for the year, including any carry-forward under section 146(f) of the Internal Revenue Code, shall be allocated by the following formula. The state ceiling shall be allocated by the state to governmental units, as needed to finance qualified projects and programs under the Internal Revenue Code, as amended, on the basis of effective utilization, need, economic impact and efficient distribution of resources throughout the state by the department of commerce. The allocation formula established by this section shall be implemented and administered by the governor pursuant to the terms and provisions of an executive order which shall make provisions for priorities of projects and programs based on the formula. No qualified applicant for the state ceiling shall render decisions in the allocation formula.

**History.**

I.C., § 50-2803, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 3, p. 959; am. 2000, ch. 432, § 1, p. 1389.

**STATUTORY NOTES**

**Cross References.**

Department of commerce, § 67-4701 et seq.

**Federal References.**

Section 146(f) of the Internal Revenue Code, referred to near the beginning of this section, is compiled as 26 USCS § 146(f).

**§ 50-2804. Authority of the governor.** — The governor is authorized and directed to provide for the implementation and administration of the allocation formula established in section 50-2803, Idaho Code, by executive order. The executive order shall: (i) establish rules and procedures for the form, contents, submission, processing, priorities and approval of applications for allocations of the state ceiling; (ii) designate an agency for receipt, verification and approval of applications and for authorization of allocations; (iii) provide for the carry-forward of an allocation under section 146(f) of the code; (iv) provide for the issuance to governmental units of certificates evidencing an allocation of the state ceiling; (v) establish a period of time within which allocations must be used; (vi) provide for a means of reallocating portions of the state ceiling with respect to allocations for bonds or certificates that are not actually issued or are issued in a lesser amount than that portion of the state ceiling which was allocated to the bonds; and (vii) provide for, through the establishment of rules and procedures or otherwise, any other matters necessary or desirable to implement and administer the allocation formula and to provide for an efficient use of the state ceiling.

**History.**

I.C., § 50-2804, as added by 1985, ch. 227, § 1, p. 543; am. 1988, ch. 303, § 4, p. 959; am. 2000, ch. 432, § 2, p. 1389.

**STATUTORY NOTES**

**Federal References.**

Section 146(f) of the Internal Revenue Code, referred to in clause (iii) in the second sentence in this section, is compiled as 26 USCS § 146(f).



**§ 50-2805. Miscellaneous.** — (1) No action taken pursuant to this chapter shall be deemed to create an obligation, debt or liability of any governmental unit or be deemed to constitute an approval of any obligations issued or to be issued hereunder.

(2) If any provision of this chapter shall be held to be or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this chapter or render it invalid, inoperative or unconstitutional. To the extent this chapter shall be held to be or shall, in fact, be invalid, inoperative or unconstitutional, all allocations of the state ceiling previously made under this chapter shall be treated as allocations made by the legislature.

(3) The state pledges and agrees with the holders of any bonds with respect to a project for which an allocation of the state ceiling was applied for by a governmental unit and which has been granted under this chapter that the state will not retroactively alter the allocation of the state ceiling to the governmental unit for such bonds.

**History.**

I.C., § 50-2805, as added by 1985, ch. 227, § 1, p. 543.

**STATUTORY NOTES**

**Effective Dates.**

Section 2 of S.L. 1985, ch. 227 provided that the act should become effective on and after January 1, 1986.



## Chapter 29

### LOCAL ECONOMIC DEVELOPMENT ACT

Sec.

50-2901. Short title.

50-2902. Findings and purpose.

50-2903. Definitions.

50-2903A. Effect of ordinance to modify urban renewal plan — Exception.

50-2904. Authority to create revenue allocation area.

50-2905. Recommendation of urban renewal agency.

50-2905A. Election necessary for expenditures on certain projects.

50-2906. Public hearing and ordinance required.

50-2907. Transmittal of revenue allocation area description and other documents to taxing agencies.

50-2908. Determination of tax levies — Creation of special fund.

50-2909. Issuance of bonds — Bond provisions.

50-2910. Bonds not general obligation of agency or municipality.

50-2911. Limitations on review.

50-2912. Severability.

50-2913. Urban renewal agency plans — Reporting information required — Penalties for failure to report.

**§ 50-2901. Short title.** — This act may be known and cited as the “Local Economic Development Act.”

**History.**

1988, ch. 210, § 1, p. 393.

## STATUTORY NOTES

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**Compiler’s Notes.**

The term “this act” in this section refers to S.L. 1988, Chapter 210, which is compiled as §§ 50-2901 to 50-2903, 50-2904, 50-2905, and 50-2906 to 50-2912.

## CASE NOTES

**Constitutionality.**

Where citizen brought suit against an urban renewal agency, alleging the agency’s issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho **Const., Art. VIII, § 3 or 4**, because the agencies were not the alter egos of cities. **Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).**

## RESEARCH REFERENCES

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014).

**ALR.** — Adverse impact upon existing business as factor affecting validity and substantive requisites of issuance, by state or local

governmental agencies, of economic development bonds in support of private business enterprise. 39 A.L.R.4th 1096.

**§ 50-2902. Findings and purpose.** — It is hereby found and declared that there exists in municipalities a need to raise revenue to finance the economic growth and development of urban renewal areas and competitively disadvantaged border community areas. The purpose of this act is to provide for the allocation of a portion of the property taxes levied against taxable property located in a revenue allocation area for a limited period of time to assist in the financing of urban renewal plans, to encourage private development in urban renewal areas and competitively disadvantaged border community areas, to prevent or arrest the decay of urban areas due to the inability of existing financing methods to promote needed public improvements, to encourage taxing districts to cooperate in the allocation of future tax revenues arising in urban areas and competitively disadvantaged border community areas in order to facilitate the long-term growth of their common tax base, and to encourage private investment within urban areas and competitively disadvantaged border community areas. The foregoing purposes are hereby declared to be valid public purposes for municipalities.

**History.**

1988, ch. 210, § 2, p. 393; am. 1990, ch. 430, § 3, p. 1186; am. 1994, ch. 381, § 1, p. 1222.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” in the second sentence refers to S.L. 1988, Chapter 210, which is compiled as §§ 50-2901 to 50-2903, 50-2904, 50-2905, and 50-2906 to 50-2912.

**CASE NOTES**

**Cited** *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

**§ 50-2903. Definitions.** — The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

- (1) “Act” or “this act” means this revenue allocation act.
- (2) “Agency” or “urban renewal agency” means a public body created pursuant to [section 50-2006, Idaho Code](#).
- (3) “Authorized municipality” or “municipality” means any county or incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.
- (4) Except as provided in [section 50-2903A, Idaho Code](#), “base assessment roll” means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allocation area that becomes taxable after the date of the base assessment roll, provided any increase in valuation caused by the removal of the agricultural tax exemption from undeveloped agricultural land in a revenue allocation area shall be added to the base assessment roll. An urban renewal plan containing a revenue allocation financing provision adopted or modified prior to July 1, 2016, is not subject to [section 50-2903A, Idaho Code](#). For plans adopted or modified prior to July 1, 2016, and for subsequent

modifications of those urban renewal plans, the value of the base assessment roll of property within the revenue allocation area shall be determined as if the modification had not occurred.

(5) “Budget” means an annual estimate of revenues and expenses for the following fiscal year of the agency. An agency shall, by September 1 of each calendar year, adopt and publish, as described in [section 50-1002, Idaho Code](#), a budget for the next fiscal year. An agency may amend its adopted budget using the same procedures as used for adoption of the budget. For the fiscal year that immediately predates the termination date for an urban renewal plan involving a revenue allocation area or will include the termination date, the agency shall adopt and publish a budget specifically for the projected revenues and expenses of the plan and make a determination as to whether the revenue allocation area can be terminated before the January 1 of the termination year pursuant to the terms of [section 50-2909\(4\), Idaho Code](#). In the event that the agency determines that current tax year revenues are sufficient to cover all estimated expenses for the current year and all future years, by September 1 the agency shall adopt a resolution advising and notifying the local governing body, the county auditor, and the state tax commission and recommending the adoption of an ordinance for termination of the revenue allocation area by December 31 of the current year and declaring a surplus to be distributed as described in [section 50-2909, Idaho Code](#), should a surplus be determined to exist. The agency shall cause the ordinance to be filed with the office of the county recorder and the Idaho state tax commission as provided in [section 63-215, Idaho Code](#). Upon notification of revenues sufficient to cover expenses as provided herein, the increment value of that revenue allocation area shall be included in the net taxable value of the appropriate taxing districts when calculating the subsequent property tax levies pursuant to [section 63-803, Idaho Code](#). The increment value shall also be included in subsequent notification of taxable value for each taxing district pursuant to [section 63-1312, Idaho Code](#), and subsequent certification of actual and adjusted market values for each school district pursuant to [section 63-315, Idaho Code](#).

(6) “Clerk” means the clerk of the municipality.

(7) “Competitively disadvantaged border community area” means a parcel of land consisting of at least forty (40) acres which is situated within



the jurisdiction of a county or an incorporated city and within twenty-five (25) miles of a state or international border, which the governing body of such county or incorporated city has determined by ordinance is disadvantaged in its ability to attract business, private investment, or commercial development, as a result of a competitive advantage in the adjacent state or nation resulting from inequities or disparities in comparative sales taxes, income taxes, property taxes, population or unique geographic features.

(8) “Deteriorated area” means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a

municipality. The provisions of [section 50-2008\(d\), Idaho Code](#), shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(f) “Deteriorated area” does not mean not developed beyond agricultural, or any agricultural operation as defined in [section 22-4502\(1\), Idaho Code](#), or any forest land as defined in [section 63-1701\(4\), Idaho Code](#), unless the owner of the agricultural operation or the forest landowner of the forest land gives written consent to be included in the deteriorated area, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(9) “Facilities” means land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxiliary and related facilities.

(10) “Increment value” means the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property’s current base value on the base assessment roll, provided such difference is a positive value.

(11) “Local governing body” means the city council or board of county commissioners of a municipality.

(12) “Plan” or “urban renewal plan” means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to sections 50-2008 and 50-2905, Idaho Code, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) “Project” or “urban renewal project” or “competitively disadvantaged border areas” may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvement;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area or competitively disadvantaged border community area, the urban renewal objectives of this act in accordance with the urban renewal plan or the competitively disadvantaged border community area ordinance.

(d) Disposition of any property acquired in the urban renewal area or the competitively disadvantaged border community area (including sale, initial leasing or retention by the agency itself) or the municipality creating the competitively disadvantaged border community area at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area or the competitively disadvantaged border community area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area or competitively disadvantaged border community area where necessary to

eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities or where necessary to accomplish the purposes for which a competitively disadvantaged border community area was created by ordinance;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(14) “Project costs” includes, but is not limited to:

(a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;

(b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;

(c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;

(d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(e) Direct administrative costs, including reasonable charges for the time spent by city or county employees in connection with the implementation of a project plan;

(f) Relocation costs;

(g) Other costs incidental to any of the foregoing costs.

(15) “Revenue allocation area” means that portion of an urban renewal area or competitively disadvantaged border community area where the equalized assessed valuation (as shown by the taxable property assessment rolls) of which the local governing body has determined, on and as a part of an urban renewal plan, is likely to increase as a result of the initiation of an urban renewal project or competitively disadvantaged border community

area. The base assessment roll or rolls of revenue allocation area or areas shall not exceed at any time ten percent (10%) of the current assessed valuation of all taxable property within the municipality.

(16) “State” means the state of Idaho.

(17) “Tax” or “taxes” means all property tax levies upon taxable property.

(18) “Taxable property” means taxable real property, personal property, operating property, or any other tangible or intangible property included on the equalized assessment rolls.

(19) “Taxing district” means a taxing district as defined in [section 63-201, Idaho Code](#), as that section now exists or may hereafter be amended.

(20) “Termination date” means a specific date no later than twenty (20) years from the effective date of an urban renewal plan or as described in [section 50-2904, Idaho Code](#), on which date the plan shall terminate. Every urban renewal plan shall have a termination date that can be modified or extended subject to the twenty (20) year maximum limitation. Provided however, the duration of a revenue allocation financing provision may be extended as provided in [section 50-2904, Idaho Code](#).

### **History.**

1988, ch. 210, § 3, p. 393; am. 1990, ch. 430, § 4, p. 1186; am. 1994, ch. 381, § 2, p. 1222; am. 1996, ch. 322, § 54, p. 1029; am. 2000, ch. 275, § 1, p. 893; am. 2002, ch. 143, § 2, p. 394; am. 2011, ch. 317, § 6, p. 911; am. 2016, ch. 349, § 3, p. 1014.

## **STATUTORY NOTES**

### **Cross References.**

State tax commission, [art. VII, § 12, Idaho Const.](#) and § 63-101.

### **Amendments.**

The 2011 amendment, by ch. 317, added the provision to the end of subsection (4); added paragraph (8)(f); inserted “where” in subsection (15); and substituted “twenty (20) years” for “twenty-four (24) years” twice in subsection (20).

The 2016 amendment, by ch. 349, in subsection (4), added “Except as provided in [section 50-2903A, Idaho Code](#)” at the beginning and added the last two sentences; substituted “sections 50-2008 and 50-2905, Idaho Code” for “[section 50-2008, Idaho Code](#)” in subsection (12); and substituted “city or county employees” for “municipal employees” near the end of paragraph (14)(e).

### **Compiler’s Notes.**

The term “this act” in subsection (1) and paragraph (13)(c) refers to S.L. 1988, Chapter 210, which is compiled as §§ 50-2901 to 50-2903, 50-2904, 50-2905, and 50-2906 to 50-2912.

The words enclosed in parentheses so appeared in the law as enacted.

Section 9 of S.L. 2016, ch. 349 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 11 of S.L. 2011, ch. 317 declared an emergency retroactively to January 1, 2011, only as it applies to the amendment of Section 50-2903(4). Approved April 13, 2011.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2903A. Effect of ordinance to modify urban renewal plan — Exception. —**

(1)(a) On and after July 1, 2016, except as provided in subsection (2) of this section, when an urban renewal plan containing a revenue allocation financing provision is modified through an ordinance of the authorized municipality, the base value for the year immediately following the year in which the modification occurred shall include the current year's equalized assessed value of the taxable property in a revenue allocation area. The urban renewal agency shall be required annually to attest to having or not having modified any of its plans. If no modification has occurred, the urban renewal agency shall attest that fact on an affidavit provided by the state tax commission before the first Monday in June of each year. Modification shall not be deemed to have occurred when:

(i) There is a plan amendment to make technical or ministerial changes to a plan that does not involve an increase in the use of revenues allocated to the agency pursuant to [section 50-2908, Idaho Code](#); or

(ii) There is a plan amendment to accommodate an increase in the revenue allocation area boundary as permitted in [section 50-2033, Idaho Code](#); or

(iii) There is a plan amendment to accommodate a de-annexation in the revenue allocation area boundary; or

(iv) There is a plan amendment to support growth of an existing commercial or industrial project in an existing revenue allocation area, subject to the provisions of [section 50-2905A, Idaho Code](#).

(b) Notice of any plan modification shall state the nature of the modification and shall be provided to the state tax commission, the county clerk and the county assessor by the first Monday in June of the years following the modification.

(c) Once a modification is deemed to have occurred, the base assessment value shall be reset pursuant to this subsection.

(2) When the urban renewal agency certifies to the county clerk and state tax commission that there is outstanding indebtedness, the base value for the year immediately following the year in which the modification occurred shall be computed and adjusted irrespective of the modification to the plan, but in compliance with all other requirements for adjustment as provided in [section 50-2903\(4\), Idaho Code](#). To be allowed this exception no later than the first Monday in June each year, beginning the year immediately following the year in which the modification occurred, the urban renewal agency must certify:

(a) That the indebtedness could not be repaid by the agency prior to the termination of the revenue allocation area without the allocation of property tax revenues as provided in [section 50-2908, Idaho Code](#); and

(b) The estimated total budget to be used for paying indebtedness during each year until termination of the revenue allocation area, the amount of nonproperty tax revenue to be used by the agency to pay indebtedness each year, and the estimated amount of revenue to be allocated to the agency for the modified revenue allocation area pursuant to [section 50-2908, Idaho Code](#), to be used for paying indebtedness. For purposes of this section “indebtedness” shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations, together with all expenses necessary to comply with all covenants related to the indebtedness.

(3) To the extent the amount of revenue allocated to the modified revenue allocation area pursuant to [section 50-2908, Idaho Code](#), exceeds the amount necessary to pay indebtedness certified in subsection (2)(b) of this section, the excess shall be distributed by the county clerk to each taxing district or unit in the same manner as property taxes, except that each taxing district or unit shall be notified of the amount of any distribution of excess urban renewal allocations included in any distribution. For purposes of the limitation provided by [section 63-802, Idaho Code](#), moneys received by any taxing district or unit pursuant to this subsection shall be treated as property tax revenue.

(4) Within thirty (30) days from the time the state tax commission receives information that an urban renewal plan for a revenue allocation area has been modified, the state tax commission shall notify the urban



renewal agency and the county clerk of such receipt and the determination regarding any limits on the maximum amount of property tax revenue that will be allocated to the urban renewal agency from the current year's property taxes.

**History.**

I.C., § 50-2903A, as added by 2016, ch. 349, § 4, p. 1014.

**STATUTORY NOTES**

**Cross References.**

State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

**Compiler's Notes.**

Section 9 of S.L. 2016, ch. 349 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-2904. Authority to create revenue allocation area.** — An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this chapter, as part of an urban renewal plan or competitively disadvantaged border community area ordinance. A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area or thereafter as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area. Urban renewal plans existing prior to the effective date of this section may be modified to include a revenue allocation financing provision. Except as provided in subsections (1), (2), (3) and (4) of this section, no revenue allocation provision of an urban renewal plan or competitively disadvantaged border community area ordinance, including all amendments thereto, shall have a duration exceeding twenty (20) years from the date the ordinance is approved by the municipality; and provided further, no additions to the land area of an existing revenue allocation area shall be interpreted to or shall cause an extension of the date of the twenty (20) year limit that was originally established for the revenue allocation area. Notwithstanding these limitations, the duration of the revenue allocation financing provision may be extended if:

(1) The maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than twenty (20) years; or

(2) The urban renewal agency determines that it is necessary to refinance outstanding bonds payable from the revenue allocation financing provision to a maturity exceeding the twenty (20) year duration of the revenue allocation financing provision in order to avoid a default on the bonds; or

(3) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged border

community area ordinance prior to July 1, 2000, in which is defined the duration of the plan beyond a period of twenty (20) years, in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community area ordinance or may be extended as set forth in subsection (2) of this section; and

(4) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged border community area ordinance after July 1, 2000, and prior to July 1, 2011, in which is defined the duration of the plan beyond a period of twenty (20) years in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community area ordinance. The duration of the revenue allocation financing provision set forth in this subsection may be extended if the maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than thirty (30) years or may be extended as set forth in subsection (2) of this section.

(5) During the extension set forth in subsections (1), (2), (3) and (4) of this section, any revenue allocation area revenues exceeding the amount necessary to repay the bonds during the period exceeding the maximum year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis.

### **History.**

1988, ch. 210, § 4, p. 393; am. 1994, ch. 381, § 3, p. 1222; am. 2000, ch. 275, § 2, p. 893; am. 2002, ch. 143, § 3, p. 394; am. 2009, ch. 218, § 1, p. 680; am. 2011, ch. 317, § 7, p. 911.

## **STATUTORY NOTES**

### **Amendments.**

The 2009 amendment, by ch. 218, in the introductory paragraph, in the next-to-last sentence, substituted “Except as provided in subsections (1), (2)

and (3) of this section” for “Except as provided below,” and added the language beginning “and provided further, no additions to the land area of an existing revenue allocation area,” and in the last sentence, added “Notwithstanding these limitations”; and, in subsections (3) and (4), inserted “area.”

The 2011 amendment, by ch. 317, in the introductory paragraph, inserted “and (4)” and substituted “twenty (20)” for “twenty-four (24)” twice in the fourth sentence and; substituted “twenty (20) years” for “thirty (30) years” in subsection (1); substituted “twenty (20) years” for “twenty-four (24) years” in subsection (2); in subsection (3), substituted “twenty (20) years” for “twenty-four (24) years” and added “or may be extended as set forth in subsection (2) of this section”; substituted present subsection (4) for the former subsection (4), which read, “During the extensions set forth in subsections (1) and (2) of this section, any revenue allocation area revenues exceeding the amount necessary to repay the bonds during the period exceeding the twenty-four (24) year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis”; and added present subsection (5).

### **Compiler’s Notes.**

The phrase “the effective date of this section” in the third sentence in the introductory paragraph refers to the effective date of S.L. 1988, ch. 210, § 4, which was effective July 1, 1988.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2905. Recommendation of urban renewal agency.** — In order to implement the provisions of this chapter, the urban renewal agency of the municipality shall prepare and adopt a plan for each revenue allocation area and submit the plan and recommendation for approval thereof to the local governing body. The plan shall include with specificity:

(1) A statement describing the total assessed valuation of the base assessment roll of the revenue allocation area and the total assessed valuation of all taxable property within the municipality;

(2) A statement listing the kind, number, and location of all proposed public works or improvements within the revenue allocation area;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A fiscal impact statement showing the impact of the revenue allocation area, both until and after the bonds are repaid, upon all taxing districts levying taxes upon property on the revenue allocation area;

(6) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred;

(7) A termination date for the plan and the revenue allocation area as provided for in [section 50-2903\(20\), Idaho Code](#). In determining the termination date, the plan shall recognize that the agency shall receive allocation of revenues in the calendar year following the last year of the revenue allocation provision described in the urban renewal plan;

(8) A description of the disposition or retention of any assets of the agency upon the termination date. Provided however, nothing herein shall prevent the agency from retaining assets or revenues generated from such assets as long as the agency shall have resources other than revenue allocation funds to operate and manage such assets; and

(9) Any changes to an urban renewal plan as provided in subsections (2) and (6) of this section shall be noticed and shall be completed in an open public meeting.

**History.**

1988, ch. 210, § 5, p. 393; am. 2002, ch. 143, § 4, p. 394; am. 2011, ch. 317, § 8, p. 911; am. 2016, ch. 349, § 5, p. 1014.

**STATUTORY NOTES****Cross References.**

Open meeting law, § 74-201 et seq.

**Amendments.**

The 2011 amendment, by ch. 317, moved “a statement listing” from the end of the introductory paragraph to the beginning of subsection (2); inserted a new subsection (1) and redesignated the subsequent subsections.

The 2016 amendment, by ch. 349, added “with specificity” at the end of the introductory paragraph and added subsection (9).

**Compiler’s Notes.**

Section 9 of S.L. 2016, ch. 349 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**RESEARCH REFERENCES**

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2905A. Election necessary for expenditures on certain projects.**

— (1) Notwithstanding any other provision of this chapter, on and after the effective date of this act, it shall be unlawful for an urban renewal agency to expend revenue collected under this chapter on project costs when either the amount of revenue collected under this chapter, or the amount of revenue collected under this chapter plus any other public funds, not including federal funds or federal funds administered by a public body, contributes to fifty-one percent (51%) or more of the total project cost and the project is for construction of a municipal building or a multipurpose sports stadium complex, or the remodel of such a building or complex, with a total project cost exceeding one million dollars (\$1,000,000) unless such construction project is first approved in an election by sixty percent (60%) of the participating qualified electors residing within the borders of the qualified municipality. An election pursuant to this section shall be in accordance with the provisions of chapter 1, title 34, Idaho Code. The total project cost described in this subsection shall not include the cost of any infrastructure or belowground improvements including, but not limited to, water, sewer, storm drainage, electrical, natural gas, telecommunication, or other similar systems and lines, streets, roads, curbs, gutters, sidewalks, walkways, parking facilities, or unoccupied auxiliary structures. This section shall not be construed to require an election regarding bonds issued prior to the effective date of this act.

(2) For purposes of this section, the following terms shall have the following meanings:

(a) “Multipurpose sports stadium complex” means a place or venue for indoor or outdoor sports, concerts, or other events that contains a field or other playing surface or area either partly or completely surrounded by a tiered structure designed to allow spectators to stand or sit and view the event;

(b) “Municipal building” means only an administrative building, city hall, library, courthouse, public safety or law enforcement buildings, other judicial buildings, fire stations, jails, and detention facilities that are

not subject to property taxation whether they are, or are intended to be, owned or operated by or leased to a public body for the public's benefit;

(c) "Project costs" shall have the same meaning as provided in [section 50-2903\(14\), Idaho Code](#);

(d) "Public body" shall have the same meaning as provided in [section 50-2018\(3\), Idaho Code](#);

(e) "Public funds" shall mean the funds collected or received by a public body but shall not include grants or donations from private entities or individuals to the public body.

### **History.**

[I.C., § 50-2905A](#), as added by 2016, ch. 349, § 6, p. 1014; am. 2017, ch. 27, § 1, p. 50; am. 2019, ch. 321, § 1, p. 956.

## **STATUTORY NOTES**

### **Amendments.**

The 2017 amendment, by ch. 27 substituted "[section 50-2903\(14\), Idaho Code](#)" for "[section 50-2008, Idaho Code](#)" at the end of paragraph (2)(b).

The 2019 amendment, by ch. 321, rewrote the section to the extent that a detailed comparison is impracticable.

### **Compiler's Notes.**

Section 9 of S.L. 2016, ch. 349 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

The phrase "the effective date of this act" near the beginning and near the end of subsection (1) refers to the effective date of S.L. 2019, Chapter 321, which was effective July 1, 2019.



**§ 50-2906. Public hearing and ordinance required.** — (1) To adopt a new urban renewal plan or create a competitively disadvantaged border community area containing a revenue allocation financing provision, the local governing body of an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and section 50-2008, Idaho Code. To modify an existing urban renewal plan, to add or change a revenue allocation, an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and conduct a public hearing as provided in section 50-2008(c), Idaho Code. No urban renewal project, plan, competitively disadvantaged border community area or modification thereto, or revenue allocation financial provision shall be held ineffective for failure to comply with the requirements of this section if compliance with the section is substantial and in good faith and administrative authority of both the local governing body and urban renewal agency does not extend beyond the municipal boundary of the authorized municipality. Urban renewal plans and revenue allocation financing provisions may be held ineffective if an urban renewal area or revenue allocation area extends outside the municipal boundary of an authorized municipality and a transfer of powers ordinance has not been adopted by the cooperating county.

(2) A revenue allocation financing provision adopted in accordance with this chapter shall be effective retroactively to January 1 of the year in which the local governing body of the authorized municipality enacts such ordinance.

(3) The local governing body of an authorized municipality shall prepare a notice stating: (a) that an urban renewal plan or modification thereto or a competitively disadvantaged border community area has been proposed and is being considered for adoption, and that such plan or modification thereto or proposal to create a competitively disadvantaged border community area contains a revenue allocation financing provision that will cause property taxes resulting from any increases in equalized assessed valuation in excess of the equalized assessed valuation as shown on the base assessment roll to be allocated to the agency for urban renewal and competitively disadvantaged border community area purposes; and (b) that an agreement

on administration of a revenue allocation financing provision extending beyond the municipal boundary of the authorized municipality has been negotiated with the cooperating county having extraterritorial power and that the agreement has been formalized by a transfer of power ordinance adopted by that county; and (c) that a public hearing on such plan or modification will be held by the local governing body pursuant to [section 50-2008\(c\), Idaho Code](#). The notice shall also state the time, date, and place of the hearing. At least thirty (30) days but not more than sixty (60) days prior to the date set for final reading of the ordinance, the local governing body shall publish the notice in a newspaper of general circulation and transmit the notice, together with a copy of the plan and recommendation of the urban renewal agency or the municipality which by ordinance created the competitively disadvantaged border community area, to the governing body of each taxing district which levies taxes upon any taxable property in the revenue allocation area and which would be affected by the revenue allocation financing provision of the urban renewal plan proposed to be approved by the local governing body.

### **History.**

1988, ch. 210, § 6, p. 393; am. 1994, ch. 381, § 4, p. 1222; am. 2000, ch. 162, § 1, p. 410; am. 2000, ch. 275, § 3, p. 893.

## **STATUTORY NOTES**

### **Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 162, in subsection (1), inserted “or revenue allocation financial provision” in the third sentence, and added “and administrative authority of both the local governing body and urban renewal agency does not extend beyond the municipal boundary of the authorized municipality”, added the last sentence; in subsection (3), inserted “an agreement on administration of a revenue allocation financing provision extending beyond the municipal boundary of the authorized municipality has been negotiated with the cooperating county having extraterritorial power and that the agreement has been formalized by a transfer of power

ordinance adopted by that county; and (c) that” preceding “a public hearing” and made minor punctuation changes.

The 2000 amendment, by ch. 275, inserted “or proposal to create a competitively disadvantaged border community area” preceding “contains a revenue allocation financing provision” in subsection (3).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What’s the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2907. Transmittal of revenue allocation area description and other documents to taxing agencies.** — (1) After the effective date of an ordinance enacted by the local governing body of an authorized municipality, the clerk of the authorized municipality shall transmit, to the county auditor and tax assessor of the county in which the revenue allocation area is located, to the affected taxing districts, and to the state tax commission, a copy of the ordinance enacted, a copy of the legal description of the boundaries of the revenue allocation area, and a map indicating the boundaries of the revenue allocation area.

(2) For revenue allocation areas extending beyond the corporate municipal boundary of the authorized municipality, the copy of the ordinance enacted by the authorized municipality shall include, as an attachment, a copy of the transfer of powers ordinance adopted by the cooperating county under [section 50-2906\(3\)\(b\), Idaho Code](#).

(3) Such documents shall be transmitted within the time required by [section 63-215, Idaho Code](#).

### **History.**

1988, ch. 210, § 7, p. 393; am. 2000, ch. 114, § 1, p. 252; am. 2000, ch. 162, § 2, p. 410.

## **STATUTORY NOTES**

### **Cross References.**

State tax commission, [art. VII, § 12, Idaho Const.](#) and § 63-101.

### **Amendments.**

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 114, deleted “or plan” preceding “indicating the boundaries” in the first sentence, and substituted “within the time required by [section 63-215, Idaho Code](#)” for “as promptly as practicable following the enactment of such ordinance” in the last sentence.

The 2000 amendment, by ch. 162, divided the former paragraph into present subsections (1) and (3); and added subsection (2).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2908. Determination of tax levies — Creation of special fund. —**

(1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property, except the current equalized assessed valuation shall be used for calculating the tax rate for:

(a) Levies for refunds and credits pursuant to [section 63-1305, Idaho Code](#), and any judgment pursuant to [section 33-802\(1\), Idaho Code](#), certified after December 31, 2007;

(b) Levies permitted pursuant to [section 63-802\(3\), Idaho Code](#), certified after December 31, 2007;

(c) Levies for voter-approved general obligation bonds of any taxing district and plant facility reserve fund levies passed after December 31, 2007;

(d) Levies for payment of obligations that have been judicially confirmed pursuant to chapter 13, title 7, Idaho Code, and that meet the criteria of sections 63-1315 and 63-1316, Idaho Code;

(e) Levies set forth in paragraphs (a) through (d) of this subsection, first certified prior to December 31, 2007, when the property affected by said levies is included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or any taxing district after December 31, 2007; and

(f) School levies for supplemental maintenance and operation pursuant to section 33-802(3) and (4), Idaho Code, approved after December 31, 2007, and for emergency funds pursuant to [section 33-805, Idaho Code](#), approved after July 1, 2015.

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the

taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) Except as otherwise provided in subparagraph (iv) of this paragraph, a portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area;

(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1) of this section; and

(iv) In the case of a revenue allocation area first formed or expanded to include the property on or after July 1, 2020, all taxes levied by any highway district, unless the local governing body that created the revenue allocation area has responsibility for the maintenance of roads or highways. In the case of property located within a revenue allocation area prior to July 1, 2020, or property located within a revenue allocation area created by a local governing body that has responsibility for the maintenance of roads or highways, the allocation of taxes shall be governed by subparagraph (ii) of this paragraph. In any case, the highway district and the urban renewal agency may enter into an agreement for a different allocation. A copy of any such agreement shall be submitted to the state tax commission and to the county clerk by the highway district as soon as practicable after the parties have entered into the contract and by no later than September 1 of the year in which the agreement takes effect.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one (1) or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2)(b) of this section.

(4) For the purposes of [section 63-803, Idaho Code](#), during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy other than a levy specified in subsection (1) of this section, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002 and 63-1313, Idaho Code, reference in the Idaho Code to the term “market value for assessment purposes” (or any other such similar term) shall mean market value for assessment purposes as defined in [section 63-208, Idaho Code](#).

### **History.**

[I.C., § 50-2908](#), as added by 2012, ch. 339, § 11, p. 934; am. 2015, ch. 40, § 2, p. 90; am. 2019, ch. 205, § 4, p. 625; am. 2020, ch. 259, § 1, p. 754.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 50-2908, which comprised 1988, ch. 210, § 8, p. 393; am. 1996, ch. 208, § 13, p. 658; am. 1996, ch. 322, § 55, p. 1029; am. 1997, ch. 117, § 8, p. 298; am. 2006 (1st E.S.), ch. 1, § 14; am. 2008, ch. 253, § 1, p. 741; am. 2009, ch. 50, § 1, p. 131; am. 2012, ch. 339, § 3, p. 934; am. 2015,



ch. 40, § 1, p. 90, was repealed by S.L. 2012, ch. 339, § 8, effective July 1, 2017.

### **Amendments.**

The 2015 amendment, by ch. 40, § 2, added “and for emergency funds pursuant to [section 33-805, Idaho Code](#), approved after July 1, 2015” at the end of paragraph (1)(e).

The 2019 amendment, by ch. 205, in subsection (1), added paragraph (d), redesignated former paragraphs (d) and (e) as paragraphs (e) and (f), substituted “paragraphs (a) through (d) of this subsection” for “paragraphs (a) through (c) of this subsection” near the beginning of paragraph (e); and substituted “subsection (1) of this section” for “subsection (1)(a) through (e) of this section” at the end of paragraph (2)(a)(iii) and near the middle of subsection (4).

The 2020 amendment, by ch. 258, in subsection (2), added “Except as otherwise provided in subparagraph (iv) of this paragraph” at the beginning of paragraph (a)(ii) and added paragraph (a)(iv).

### **Compiler’s Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Section 8 of S.L. 2019, ch. 205 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 17 of S.L. 2012, ch. 339 makes the enactment of this section effective July 1, 2017.

Section 3 of S.L. 2015, ch. 40 provided that the amendment of this section by section 2 should take effect on and after July 1, 2017.

Section 9 of S.L. 2019, ch. 205 declared an emergency and made this section retroactive to January 1, 2019. Approved March 25, 2019.

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2909. Issuance of bonds — Bond provisions.** — (1) If the local governing body of an authorized municipality has enacted an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency established by such municipality is hereby authorized and empowered:

- (a) To apply the revenues allocated to it pursuant to [section 50-2908, Idaho Code](#), for payment of the projected costs of any urban renewal project located in the revenue allocation area;
- (b) To borrow money, incur indebtedness and issue one (1) or more series of bonds to finance or refinance, in whole or in part, the urban renewal projects authorized pursuant to such plan within the limits established by paragraph (c) of this subsection; and
- (c) To pledge irrevocably to the payment of principal of and interest on such moneys borrowed, indebtedness incurred or bonds issued by the agency the revenues allocated to it pursuant to [section 50-2908, Idaho Code](#).

All bonds issued under this section shall be issued in accordance with [section 50-2012, Idaho Code](#), except that such bonds shall be payable solely from the special fund or funds established pursuant to [section 50-2908, Idaho Code](#). On and after July 1, 2011, bonds may be issued for a maximum period of twenty (20) years.

(2) The agency shall be obligated and bound to pay such borrowed moneys, indebtedness, and bonds as the same shall become due, but only to the extent that the moneys are available in a special fund or funds established under [section 50-2908, Idaho Code](#); and the agency is authorized to maintain an adequate reserve therefor from any moneys deposited in such a special fund or funds.

(3) Nothing in this chapter shall in any way impair any powers an urban renewal agency may have under subsection (a) of [section 50-2012, Idaho Code](#).

(4) When the revenue allocation area plan budget described in [section 50-2903\(5\), Idaho Code](#), estimates that all financial obligations have been

provided for, the principal of and interest on such moneys, indebtedness and bonds have been paid in full, or when deposits in the special fund or funds created under this chapter are sufficient to pay such principal and interest as they come due, and to fund reserves, if any, or any other obligations of the agency funded through revenue allocation proceeds shall be satisfied and the agency has determined no additional project costs need be funded through revenue allocation financing, the allocation of revenues under [section 50-2908, Idaho Code](#), shall thereupon cease; any moneys in such fund or funds in excess of the amount necessary to pay such principal and interest shall be distributed to the affected taxing districts in which the revenue allocation area is located in the same manner and proportion as the most recent distribution to the affected taxing districts of the taxes on the taxable property located within the revenue allocation area; and the powers granted to the urban renewal agency under [section 50-2909, Idaho Code](#), shall thereupon terminate.

#### **History.**

1988, ch. 210, § 9, p. 393; am. 2002, ch. 143, § 5, p. 394; am. 2011, ch. 317, § 9, p. 911.

### **STATUTORY NOTES**

#### **Amendments.**

The 2011 amendment, by ch. 317, added the last sentence in subsection (1).

#### **Compiler's Notes.**

Section 10 of S.L. 2011, ch. 317 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

### **CASE NOTES**

#### **Constitutionality.**

Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho [Const., Art. VIII, § 3 or 4](#), because the agencies were not the alter egos of cities. [Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 \(2009\)](#).

## **RESEARCH REFERENCES**

**Idaho Law Review.** — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

**§ 50-2910. Bonds not general obligation of agency or municipality. —** Except to the extent of moneys deposited in a special fund or funds under this act and pledged to the payment of the principal of and interest on bonds or other obligations, the agency shall not be liable on any such bonds or other obligations. The bonds issued and other obligations incurred by any agency under this chapter shall not constitute a general obligation or debt of any municipality, the state or any of its political subdivisions. In no event shall such bonds or other obligations give rise to general obligation or liability of the agency, the municipality, the state, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers, or be payable out of any funds or properties other than the special fund or funds of the agency pledged therefor; and such bonds and other obligations shall so state on their face. Such bonds and other obligations shall not constitute an indebtedness or the pledging of faith and credit within the meaning of any constitutional or statutory debt limitation or restriction.

**History.**

1988, ch. 210, § 10, p. 393.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” near the middle of the first sentence refers to S.L. 1988, Chapter 210, which is compiled as §§ 50-2901 to 50-2903, 50-2904, 50-2905, and 50-2906 to 50-2912.

**CASE NOTES**

**Constitutionality.**

Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho **Const., Art.**

VIII, § 3 or 4, because the agencies were not the alter egos of cities. *Urban Renewal Agency of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009).

**§ 50-2911. Limitations on review.** — (1) No direct or collateral action attacking or otherwise questioning the validity of any urban renewal plan, project or modification thereto (including one containing a revenue allocation provision), or the adoption or approval of such plan, project or modification, or any of the findings or determinations of the agency or the local governing body in connection with such plan, project or modification, shall be brought prior to the effective date of the ordinance adopting or modifying the plan. No direct or collateral action attacking or otherwise questioning the validity of bonds issued pursuant to section 50-2909, Idaho Code, shall be brought prior to the effective date of the resolution or ordinance authorizing such bonds.

(2) For a period of thirty (30) days after the effective date of the ordinance or resolution, any person in interest shall have the right to contest the legality of such ordinance, resolution or proceeding or any bonds which may be authorized thereby. No contest or proceeding to question the validity or legality of any ordinance, resolution or proceeding, or any bonds which may be authorized thereby, passed or adopted under the provisions of this chapter shall be brought in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the effective date of the ordinance, resolution or proceeding, and after such time the validity, legality and regularity of such ordinance, resolution or proceeding or any bonds authorized thereby shall be conclusively presumed. If the question of the validity of any adopted plan or bonds issued pursuant to this chapter is not raised within thirty (30) days from the effective date of the ordinance, resolution or proceeding issuing said bonds and fixing their terms, the authority of the plan, the authority adopting the plan, or the authority to issue the bonds, and the legality thereof, the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

### **History.**

1988, ch. 210, § 11, p. 393; am. 1990, ch. 430, § 5, p. 1186.

## **STATUTORY NOTES**



**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 7 of S.L. 1990, ch. 430 declared an emergency. Approved April 12, 1990.

**§ 50-2912. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

**History.**

1988, ch. 210, § 12, p. 393.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” throughout the section refers to S.L. 1988, Chapter 210, which is compiled as §§ 50-2901 to 50-2903, 50-2904, 50-2905, and 50-2906 to 50-2912.

**§ 50-2913. Urban renewal agency plans — Reporting information required — Penalties for failure to report.** — In addition to the provisions applicable to urban renewal agencies in chapters 20 and 29, title 50, Idaho Code, the provisions of this section shall also apply to urban renewal agencies. For purposes of this section, “urban renewal agency” shall have the same meaning as provided in chapters 20 and 29, title 50, Idaho Code.

(1)(a) There is hereby established a central registry with the state tax commission. The registry shall serve as the unified location for the reporting of and access to administrative and financial information of urban renewal plans in this state. To establish a complete list of all urban renewal plans of urban renewal agencies operating in Idaho, on the effective date of this act and so that the registry established will be comprehensive, every urban renewal agency shall register with the state registry. For calendar year 2017, the submission of information required by subsection (2) of this section shall occur prior to March 1, 2017, and shall be in the form and format required by the state tax commission. In addition to the information required by this section for the March 1, 2017, filing deadline, the entity shall report the date of its last adoption or amendment or modification of an urban renewal plan. The registry listing will be available on the state tax commission website by July 1, 2017.

(b) The state tax commission shall notify each urban renewal agency of the requirements of this section.

(c) After March 1, and on or before December 1 of each year, the county clerk of each county shall submit a list to the state tax commission of all urban renewal agencies within the county.

(2) On or before December 1 of each year, every urban renewal agency shall submit to the central registry the following information each urban renewal plan adopted or modified pursuant to sections 50-2008 and 50-2905, Idaho Code, and any modifications or amendments to those plans.

(a) Within five (5) days of submitting to the central registry the information required by this section, the urban renewal agency shall

notify the agency's appointing authority, if the entity has an appointing authority, that it has submitted such information.

(b) If any information provided by an entity as required by this section changes during the year, the entity shall update its information on the registry within thirty (30) days of any such change.

(3) Notification and penalties.

(a) If an urban renewal agency fails to submit information required by this section or submits noncompliant information required by this section, the state tax commission shall notify the entity immediately after the due date of the information that either the information was not submitted in a timely manner or the information submitted was noncompliant. The urban renewal agency shall then have thirty (30) days from the date of notice to submit the information or notify the state tax commission that it will comply by a time certain.

(b) No later than September 1 of any year, the state tax commission shall notify the appropriate board of county commissioners and city council of the entity's failure to comply with the provisions of this section. Upon receipt of such notification, the board of county commissioners shall place a public notice in a newspaper of general circulation in the county indicating that the entity is noncompliant with the legal reporting requirements of this section. The county commissioners shall assess to the entity the cost of the public notice. Such costs may be deducted from any distributions of tax increment financing of the urban renewal agency. For any noncomplying urban renewal agency, the state tax commission shall notify the board of county commissioners and city council of the compliance status of such entity by September 1 of each year until the entity is in compliance.

(c) An urban renewal agency that fails to comply with this section shall have any property tax revenue that exceeds the amount received in the immediate prior tax year distributed to the taxing districts located in or overlapping any revenue allocation area within that urban renewal district. Said distribution shall be based on each taxing district's proportionate share of the increment value in the current tax year multiplied by the taxing district's current levy rate, reduced proportionately to match the excess to be so apportioned. Any money so

received by any taxing district shall be treated as property tax revenue for the purposes of the limitation provided by [section 63-802, Idaho Code](#).

(d) In addition to any other penalty provided in this section, in any failure to comply with this section, the state tax commission shall withhold the annual distribution of sales tax distribution pursuant to [section 63-3638\(13\), Idaho Code](#), for any noncomplying urban renewal agency. The state tax commission shall withhold and retain such money in a reserve account until an urban renewal agency has complied with the provisions of this section, at which point the state tax commission shall pay any money owed to an urban renewal agency that was previously in violation of this section to the urban renewal agency.

(e) For any urban renewal agency, upon notification to the board of county commissioners from the state tax commission of noncompliance by such entity, the board of county commissioners shall convene to determine appropriate compliance measures including, but not limited to, the following:

(i) Require a meeting of the board of county commissioners and the urban renewal agency's governing body wherein the board of county commissioners shall require compliance of this section by the entity; and

(ii) Assess a noncompliance fee on the noncomplying urban renewal agency. Such fee shall not exceed five thousand dollars (\$5,000). Such fees and costs may be deducted from any distributions of the tax increment financing. Any fee collected shall be deposited into the county's current expense fund.

(4) The provisions of this section shall have no impact or effect upon reporting requirements for local governing entities relating to the state tax commission. The state tax commission may allow compliance with this section by the posting of links to an urban renewal agency's website for the posting of plans.

### **History.**

[I.C., § 50-2913](#), as added by 2016, ch. 349, § 7, p. 1014; am. 2017, ch. 58, § 29, p. 91.

## STATUTORY NOTES

### **Cross References.**

State tax commission, [art. VII, § 12, Idaho Const.](#) and § 63-101.

### **Amendments.**

The 2017 amendment, by ch. 58, redesignated the last subsection, formerly designated as subsection (5), as subsection (4), correcting an error in the enacting legislation.

### **Compiler's Notes.**

The phrase “the effective date of this act” in the third sentence in paragraph (1)(a) refers to the effective date of S.L. 2016, Chapter 349. Section 10 of S.L. 2016, Chapter 349 made the enactment of this section effective January 1, 2017.

Section 9 of S.L. 2016, ch. 349 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

### **Effective Dates.**

Section 10 of S.L. 2016, ch. 349 provided that Section 7 of this act [amending this section] should take effect on and after January 1, 2017.



## Chapter 30

### IDAHO VIDEO SERVICE ACT

Sec.

50-3001. Short title.

50-3002. Definitions.

50-3003. Franchising authority — Application for certificate of franchise authority — Modification of service areas — Term of certificate of franchise authority and termination thereof.

50-3004. Provision of access to video service within a certain period — Suspension of authority for noncompliance with certain requirements.

50-3005. Fees.

50-3006. Use of public rights-of-way by a holder of a certificate of franchise authority.

50-3007. Video service provider fee.

50-3008. Discrimination among potential residential subscribers prohibited — Violations.

50-3009. Customer service standards.

50-3010. Designation and use of channel capacity for public, educational or governmental use.

50-3011. Applicability of other law.



**§ 50-3001. Short title.** — This chapter shall be known and may be cited as the “Idaho Video Service Act.”

**History.**

**I.C., § 50-3001**, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler’s Notes.**

Section 2 of S.L. 2012, ch. 207 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 50-3002. Definitions.** — As used in this chapter:

(1) “Access to video service” means the capability of a video service provider to provide video service at a household address irrespective of whether a subscriber has ordered the service or whether the service is actually provided at the address.

(2) “Cable service” has the meaning ascribed to it in [47 U.S.C. section 522](#), as that section existed on January 1, 2012.

(3) “Cable system” has the meaning ascribed to it in [47 U.S.C. section 522](#), as that section existed on January 1, 2012.

(4) “Certificate of franchise authority” means a certificate issued by the Idaho secretary of state to a video service provider pursuant to the provisions of this chapter.

(5) “Chapter” means chapter 30, title 50, Idaho Code.

(6) “Franchise” has the meaning ascribed to it in [47 U.S.C. section 522](#), as that section existed on January 1, 2012. A certificate of franchise authority issued pursuant to [section 50-3003, Idaho Code](#), shall constitute a franchise for the purposes of [47 U.S.C. section 522](#).

(7) “Franchising entity” means the state of Idaho or a city or county within the state of Idaho authorized by state or federal law to grant a franchise.

(8) “Governing body” means the city council or the board of county commissioners of a political subdivision.

(9) “Incumbent cable service provider” means a person who provides cable service and holds a franchise issued by a franchising entity prior to July 1, 2012.

(10) “Local unit of government” means a city, county, highway district or other governmental entity of the state of Idaho having maintenance and operation responsibility over the public rights-of-way within a geographical area for which a franchise or certificate of franchise authority has been issued by a franchising entity.

(11) “Nonincumbent video service provider” means:

(a) A person authorized under the provisions of this chapter to provide video service in an area in which cable service is being provided by an incumbent cable service provider; or

(b) A person authorized under the provisions of this chapter to provide video service in a geographical area in which, on July 1, 2012, there was no incumbent cable service provider providing cable service.

(12) “Political subdivision” means a city or county of the state of Idaho.

(13) “Public rights-of-way” means the area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway or utility easement dedicated for compatible uses.

(14) “Service area” means contiguous geographical territory in the state of Idaho within which territory a video service provider is authorized to provide video service pursuant to a certificate of franchise authority.

(15) “Service tier” means a category of video service provided by a video service provider to a subscriber and for which a separate rate is charged by the video service provider.

(16) “Subscriber” means any person in this state who purchases video service. “Subscriber” does not include any person who purchases video service for resale and who, upon resale, is required to pay a video service provider fee pursuant to this chapter or pursuant to the terms of a local franchise.

(17) “System operator” means any person or group of persons who provide video service and directly, or through one (1) or more affiliates, own a significant interest in the system or facilities through which the video service is provided and which person has been issued a certificate of franchise authority pursuant to the provisions of this chapter.

(18) “Video service” means the delivery of video programming to subscribers, which programming is generally considered comparable to video programming delivered to viewers by a television broadcast station, cable service or digital television service, without regard to the technology used to deliver the video service, and which service is provided primarily through equipment or facilities located in whole or in part in, on, under or

over any public rights-of-way. The term includes cable service, but excludes any video programming provided to persons in their capacity as subscribers to commercial mobile service as defined in [47 U.S.C. section 332\(d\)](#), or video programming provided as part of and via a service that enables end users to access content, information, electronic mail or other services offered over the public internet.

(19) “Video service provider” means a provider of video service, and includes an incumbent cable or multichannel video service provider, a nonincumbent video service provider or a system operator, unless the context in which the term is used indicates otherwise.

(20) “Video service provider fee” means the amount paid by a system operator to a political subdivision pursuant to [section 50-3007, Idaho Code](#).

**History.**

[I.C., § 50-3002](#), as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler’s Notes.**

Section 2 of S.L. 2012, ch. 207 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 50-3003. Franchising authority — Application for certificate of franchise authority — Modification of service areas — Term of certificate of franchise authority and termination thereof.** — (1) On and after July 1, 2012, no person shall act as a video service provider or operate a video service network within the state of Idaho unless such person:

(a) Is an incumbent cable service provider providing cable service within an existing franchise area by permission of, or pursuant to, a franchise from a political subdivision in effect on the effective date of this chapter or a subsequent renewal thereof; or

(b) Is a nonincumbent cable service provider who:

(i) Elects to negotiate a franchise agreement in accordance with title VI of the communications act of 1934, as amended, [47 U.S.C. section 521 et seq.](#), with a political subdivision, which agreement establishes the terms and conditions applicable to that person to provide cable or video service within the jurisdictional boundaries of such political subdivision and has been issued a franchise from the political subdivision for such purpose; or

(ii) Elects to adopt the terms and conditions of an existing franchise issued by a political subdivision to an incumbent cable service provider providing video service within the same service area and who has been issued a franchise from the political subdivision authorizing the video service provider to provide video services within the political subdivision pursuant to the same terms and conditions as the franchise issued to the incumbent cable service provider in the political subdivision; or

(c) Has been granted a certificate of franchise authority to do business in the state of Idaho as a system operator by the Idaho secretary of state, as authorized in this chapter.

(2)(a) Nothing in this chapter shall be construed to prohibit a person from holding a franchise issued by a political subdivision and holding a certificate of franchise authority issued by the Idaho secretary of state for a different service area. Provided however, a video service provider shall

not hold a franchise issued by a political subdivision and a certificate of franchise authority issued by the secretary of state for the same service area, except as permitted pursuant to paragraph (b) of this subsection.

(b) An incumbent cable service provider may submit an application for a certificate of franchise authority for a service area in which the incumbent cable service provider has an existing franchise from a political subdivision for such service area and, upon the granting of a certificate of franchise authority to the incumbent cable service provider, the incumbent cable service provider's franchise from the political subdivision shall no longer be of any force or effect.

(c) It shall be in an incumbent cable operator's sole discretion to determine, in each service area wherein it provides cable service, whether or not to apply for a certificate of franchise authority or continue to provide service under an existing franchise issued by a political subdivision.

(3) Any person seeking a certificate of franchise authority shall submit an application to the Idaho secretary of state that is in accordance with the requirements of this chapter and sets forth the following information:

(a) The name of the applicant and the address of its principal place of business within the state of Idaho and the names of the applicant's principal executive officers and its primary Idaho representative;

(b) A specific identification of the political subdivision(s) constituting the service area wherein the applicant intends to provide video service;

(c) The date on which the applicant intends to begin providing video service in the service area described in the application;

(d) Verification signed by an officer or general partner of the applicant that:

(i) The applicant has filed with the federal communications commission all forms required by that agency in advance of offering video service in this state; and

(ii) The applicant is legally, financially and technically qualified to provide video service; provided however, that a cable operator that was providing cable service in Idaho pursuant to a franchise in effect on the

day before the effective date of this section shall be deemed to be legally, financially and technically qualified to provide service; and

(e) Verification that the applicant has procured and will maintain comprehensive general liability insurance coverage and automobile liability insurance coverage underwritten by one (1) or more companies licensed to do business in the state of Idaho requiring that the insurance carrier pay on behalf of the applicant, to a limit of not less than five hundred thousand dollars (\$500,000) for bodily or personal injury, death, or property damage or loss as a result of any one (1) occurrence or accident, regardless of the number of persons injured or the number of claimants, arising out of the negligent or otherwise wrongful act or omission of the applicant or applicant's employees or agents. Verification that a certificate of self-insurance has been issued to the applicant and maintained in accordance with the provisions of [section 49-1224, Idaho Code](#), shall be deemed to satisfy the requirements of this subsection.

(4) The application shall be accompanied by a filing fee as set forth in [section 50-3005, Idaho Code](#). Within thirty (30) days after filing of the application, or within thirty (30) days after the filing of supplemental information necessary to make the application complete, the secretary of state shall determine the completeness of an application or, if applicable, shall notify the applicant of a determination that the application or the application as supplemented by additional information is incomplete, state the basis for that determination, and inform the applicant that the applicant may resubmit a correct application. The secretary of state shall issue a certificate of franchise authority within fifteen (15) days after the secretary of state's determination that the filed application is complete and in compliance with the requirements of this chapter. Upon issuance of a certificate of franchise authority, the secretary of state shall, within fifteen (15) days from the date of such issuance, provide written notice of such issuance, provide written notice of such issuance to the governing body of each political subdivision and of each local unit of government located within the service area designated in the application for a certificate of franchise authority.

(5) A holder of a certificate of franchise authority may modify the boundaries of an existing service area authorized under the certificate by filing written notice of the modification with the secretary of state

accompanied by the fee required by [section 50-3005, Idaho Code](#). The holder of the certificate may make the modification on the date on which it files the written notice with the secretary of state.

(6) A certificate of franchise authority may be transferred to any successor of the system operator to which the certificate of franchise authority was initially issued upon the successor filing an application containing the same information as required in subsection (3) of this section. A successor may only undertake operation and maintenance of video facilities pursuant to an approved certificate of franchise authority upon providing notice to the local unit of government with jurisdiction concerning the public rights-of-way to be used. A successor shall be responsible to conform to approved plans and permits to coordinate installation and maintenance as required by the local unit of government.

(7) A certificate of franchise authority may be terminated by the system operator submitting a written notice to the secretary of state and any affected local unit of government. No approval of the termination of the certificate of franchise authority shall be required by the secretary of state or by any affected local unit of government. Termination of a certificate of franchise authority shall not relieve a system operator of any obligation to mitigate the effects of abandoned physical facilities remaining in any public rights-of-way.

(8) A certificate of franchise authority shall be nonexclusive and shall be for an initial term of ten (10) years, subject to changes in federal law. A certificate of franchise authority may be renewed for additional ten (10) year periods for system operators in compliance with the requirements of subsection (3) of this section.

(9) To the extent required for the purposes of [47 U.S.C. sections 521 through 561](#), the state of Idaho shall constitute the franchising authority for system operators in the state of Idaho.

(10) The duties of the secretary of state pursuant to this chapter are ministerial.

### **History.**

[I.C., § 50-3003](#), as added by 2012, ch. 207, § 1, p. 552.



## STATUTORY NOTES

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Compiler's Notes.**

The phrase “the effective date of this chapter” in paragraph (1)(a) and “the effective date of this section” in paragraph (3)(d)(ii) refer to the effective date of S.L. 2012, ch. 207, § 1, which was effective July 1, 2012.

For additional information on the federal communications commission, referred to in paragraph (3)(d)(i), see *<https://www.fcc.gov/>*.

The “s” enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2012, ch. 207 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 50-3004. Provision of access to video service within a certain period — Suspension of authority for noncompliance with certain requirements.** — (1) Not later than twenty-four (24) months after the date on which the secretary of state issues a certificate of franchise authority pursuant to section 50-3003, Idaho Code, the holder of the certificate must provide access to video service within the territorial boundaries of each service area identified in and authorized by the certificate of franchise authority.

(2) If a holder of a certificate of franchise authority does not provide access to video service to at least one (1) household within the territorial boundaries of a service area within twenty-four (24) months from the date the certificate of franchise authority authorized the provision of video service within the service area, the holder's certificate of franchise authority shall be deemed to be revoked by operation of law as to such service area without the need for any notice, hearing or action by the secretary of state and such certificate of franchise authority shall not thereafter authorize the provision of video service within such service area by the holder of the certificate.

### **History.**

I.C., § 50-3004, as added by 2012, ch. 207, § 1, p. 552.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3005. Fees.** — (1) In carrying out the provisions of this chapter, the secretary of state shall charge and collect the fees set forth in this section.

(2) The filing fee for accepting an application for a certificate of franchise authority shall be one thousand dollars (\$1,000), which fee shall include issuance of a certificate of franchise authority by the secretary of state.

(3) The filing fee for accepting an amendment to a certificate of franchise authority or providing a notice required by this chapter shall be five hundred dollars (\$500).

**History.**

I.C., § 50-3005, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3006. Use of public rights-of-way by a holder of a certificate of franchise authority.** — (1) A local unit of government shall allow the holder of a certificate of franchise authority to install, construct and maintain facilities within the public rights-of-way, over which the local unit of government has jurisdiction, to enable the provision of video services to subscribers to such services. No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other local unit of government having jurisdiction over the public rights-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of any applicable local ordinance or other regulation governing the use of the public rights-of-way.

(2) If no local code, ordinance, resolution or other regulation by the local unit of government regulates the installation of physical facilities within public rights-of-way, the following requirements shall be deemed the minimum standards for such activities:

(a) At least thirty (30) days prior to contemplated construction within public rights-of-way, a specific description of the locations where the facilities are proposed to be installed within the public rights-of-way and the construction methods that are proposed must be provided to the local unit of government responsible for the rights-of-way procurement or maintenance.

(b) A certificate of franchise authority granted pursuant to this chapter carries with it an obligation to respect orderly management and maintenance of public rights-of-way by the system operator. A system operator authorized hereby to use public rights-of-way shall employ sound construction practices to maintain the integrity of public improvements and preexisting rights-of-way conditions and shall be responsible for repair or replacement of any improvements or maintenance or restoration of any conditions disrupted by construction activities. The system operator shall cause any such repair or replacement to be made promptly and in a manner that complies with adopted standards or as is otherwise appropriate to restore the rights-of-way to conditions existing before installation.

(c) The certificate of franchise authority granted pursuant to this chapter also carries a duty to coordinate installation of any physical plant in public rights-of-way with the public utilities or municipal services already using or contemplating use of the same or related public rights-of-way. Such coordination shall endeavor to minimize conflicts and avoid damage to existing or otherwise planned facilities.

(3) A local unit of government shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory and competitively neutral access to the public rights-of-way within its jurisdiction.

(4) A local unit of government may not impose requirements that discriminate against a system operator in any manner, including:

(a) The authorization or placement of facilities in public rights-of-way that is necessary for the provision of video services;

(b) Access to a public building; or

(c) The terms or conditions for access to any utility pole within the control of the local unit of government.

(d) Provided however, the provisions of this subsection shall not be construed to supersede an agreement, or portion of an agreement, related to the joint use of utility infrastructure within the control of the local unit of government, between the local unit of government and a video service.

(5) A local unit of government may impose a permit or license fee on a system operator relating to the opening, closing, inspection or repair of public rights-of-way over which rights-of-way the local unit of government has jurisdiction, but only to the extent it imposes such a fee on other video service providers. A fee authorized in this section shall not exceed the actual costs incurred by the local unit of government that are directly related to the system operator's activity in the rights-of-way with which the permit is associated. In no event may a fee under this subsection be charged:

(a) If the system operator, or its affiliate, already has paid a permit fee in connection with the same activity in the public rights-of-way that would otherwise be covered by the permit fee under this section; or

(b) For general revenue purposes.

**History.**

I.C., § 50-3006, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3007. Video service provider fee.** — (1) A system operator providing video service within a political subdivision pursuant to a certificate of franchise authority shall pay to the political subdivision in which it provides video service a video service provider fee as may be required by the political subdivision pursuant to this section. For the purposes of this section, subscribers whose service address is within the jurisdictional limits of a city shall be deemed city subscribers and those subscribers whose service address is outside the jurisdictional limits of a city shall be deemed county subscribers.

(2) The obligation to pay such a fee shall commence upon commencement of the provision of video service to subscribers. The video service provider's fee shall be paid to the political subdivision in which it provides video service on a quarterly basis, forty-five (45) days after the close of each calendar quarter, and shall be calculated as a percentage of gross revenues, as defined in subsection (4) of this section. Except as provided in [section 50-3006, Idaho Code](#), the political subdivision may not require any additional fees or charges from the system operator and may not require the use of any other calculation method.

(3) The fee authorized by this section shall be a percentage of gross revenue, as defined in this section, and shall be determined by the political subdivision. If there is an incumbent cable service provider providing cable service in the political subdivision, the system operator shall pay an amount equal to the percentage of gross revenue paid by an incumbent cable service provider or five percent (5%), whichever is less. If there is no incumbent cable service provider having a franchise agreement with the political subdivision, or if a political subdivision has not previously established and assessed such fee to an incumbent cable service provider, the fee shall be established by the political subdivision, in an amount not in excess of five percent (5%) of the gross revenue, which fee shall be applicable to all video service providers within the political subdivision, regardless of whether they provide video service pursuant to a local franchise or a certificate of franchise authority.

(4)(a) For purposes of this section:

(i) “Gross revenues” means all revenues, calculated in accordance with generally accepted accounting principles (GAAP), that are received by the system operator from subscribers for the provision of video service to subscribers within the jurisdictional limits of the political subdivision. Gross revenues shall include the following:

1. All recurring charges and fees paid by subscribers for the provision of video service; equipment rental charges, late fees and insufficient funds fees; and fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated with services other than video services. The term “gross revenues” shall not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body which are separately itemized and billed by a video service provider to its subscribers;
2. Event-based charges for video service, including pay-per-view and video-on-demand; and
3. Any other consideration a system operator receives from its subscribers for providing video service when it is received in a transaction that would evade imposition of a franchise fee if such consideration is not included in revenue.

(ii) Notwithstanding any provision of this chapter, if a franchise agreement between a political subdivision and an incumbent cable service provider in effect on July 1, 2012, defines the term “gross revenues,” which definition includes revenues in addition to the revenues set forth in the definition of gross revenues in subsection (4) (a) of this section, the video service provider fee paid by any system operator providing service within a political subdivision pursuant to a certificate of franchise authority issued on or after July 1, 2012, pursuant to this chapter, shall be calculated based upon the definition of gross revenues set forth in the franchise agreement between a political subdivision and an incumbent cable provider in effect on July 1, 2012.

(b) In the case of a video service that is bundled or integrated functionally with other services, capabilities or applications, the portion of the system operator’s revenue attributable to the other services,



capabilities or applications shall be included in gross revenues unless the provider can reasonably identify the division or exclusion of the revenue from its books and records, which may include the provider's tax billing records, that are kept in the regular course of business.

(c) Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate would have the effect of evading the payment of the video service provider fee that would otherwise be paid for video service.

(5) Payment of the fees as required in this section shall be accompanied by a written report identifying the amount of revenues received from subscribers for the provision of video services to the subscribers and identifying exclusions from gross revenues, if any. A political subdivision may, upon reasonable advance written notice, but not more frequently than once in any calendar year, review the business records of a system operator to the extent necessary to ensure proper and accurate payment of the video service provider fee. A system operator shall provide sufficient information about such revenues to a political subdivision to allow a proper compliance review by such political subdivision. The system operator shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least three (3) years after those revenues are recognized by the system operator in its books and records. All records reasonably necessary for the audit shall, at the discretion of the political subdivision, be made available by the system operator at the location within the jurisdiction where the records are kept in the ordinary course of business, or may be provided electronically to the political subdivision with its consent. The political subdivision and the system operator shall each be responsible for their respective costs of the audit, unless the audit discloses that the system operator has underpaid the video service provider fee by more than seven percent (7%) during the examination period, in which case the system operator shall pay all of the reasonable and actual costs of the audit. Any undisputed amount or refund due to the political subdivision or the system operator shall be paid within sixty (60) days, plus interest at the statutory rate on civil judgments.

(6) A system operator may identify and collect the amount of the video service provider fee as a separate line item on the regular bill of each subscriber.

(7) Any city annexing lands shall notify a system operator in writing of any such annexation, including a description of the territory annexed. Beginning the first day of the calendar quarter occurring after the system operator has received at least forty-five (45) days' notice of annexation of customers into the city's corporate limits, subscribers within such annexed territory shall, for purposes of this section, be considered to be city subscribers.

**History.**

I.C., § 50-3007, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler's Notes.**

For additional information on generally accepted accounting principles (GAAP), referred to in paragraph (4)(a)(i), see <http://www.accounting.com/resources/gaap/>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3008. Discrimination among potential residential subscribers prohibited — Violations.** — (1) A system operator shall not deny access to video service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(2) For purposes of determining whether a system operator has violated the provisions of this section, cost, density, distance and technological or commercial limitations shall be taken into account. An alleged violation shall only be considered within the description of the service area set forth in a certificate of franchise authority. The inability to serve an end user because a holder of such certificate is prohibited from placing its own facilities in a building or property shall not be found to be a violation of the provisions of this section. The requirements of this subsection shall not be construed as authorizing any build-out requirements on a system operator.

(3) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of the provisions of this section may file a complaint with the governing authority of the political subdivision within the service area of the system operator in which the subscribers or potential subscribers reside. The complaint shall provide a clear statement of the facts and information upon which it bases the complaint. Upon receipt of any such complaint, the governing authority shall serve a copy of the complaint and supporting materials upon the subject system operator, and shall require the system operator to submit a written answer and other relevant information in response to the complaint within thirty (30) days from service of the complaint on the system operator. If the governing authority, after examination of the complaint and answer thereto, is not successful in informally resolving the dispute, the governing authority may require the system operator and the complainants to enter into mediation. Alternatively, either party may seek judicial determination of the issues. If a court finds that the holder of a certificate of franchise authority is denying access to video service to any group of potential residential subscribers because of the income level of the residents in the local area in which such group resides, the holder of a certificate of franchise authority shall provide access to video service to the affected group of potential subscribers within a

reasonable period of time, as specified by the court, to cure such noncompliance.

**History.**

I.C., § 50-3008, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3009. Customer service standards.** — A system operator shall comply with the customer service requirements as set forth in 47 CFR 76.309(c), as amended from time to time, and shall maintain a local or toll-free telephone number for customer service contact. A political subdivision may provide such assistance to subscribers as the political subdivision may deem appropriate to enforce the provisions of this section.

**History.**

I.C., § 50-3009, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

**§ 50-3010. Designation and use of channel capacity for public, educational or governmental use.** — (1) On, or within a reasonable period of time after, the date on which a system operator first provides video service to a subscriber within the service area of a political subdivision, a system operator shall designate a sufficient amount of capacity on its video service network to allow the provision of public, educational and governmental access channels or their functional equivalents, hereinafter referred to in this section as PEG channels, for noncommercial programming, as follows:

(a) Designate a sufficient amount of capacity on its network to allow the provision of PEG channels equal in number to those that have been activated by an incumbent cable service provider on the date on which the system operator first provides video service to a subscriber within such political subdivision.

(b) If there is no incumbent cable service provider or no PEG channels have been activated within the jurisdictional limits of the political subdivision located within the system operator's service area on the date on which the system operator first provides video service to a subscriber within such service area, the system operator shall, upon request, provide a maximum of two (2), in total, PEG channels for a political subdivision with a population of at least fifty thousand (50,000), and one (1), in total, PEG channel for a political subdivision with a population of less than fifty thousand (50,000). Provided however, a request by a political subdivision for the provision of PEG channels by a system operator, or a waiver of the requirement to provide PEG channels, shall be uniformly applied to all system operators providing video service within the political subdivision.

(c) The number of PEG channels set forth in paragraphs (a) and (b) of this subsection shall constitute the total number of PEG channels that a system operator may be required to designate on any single head-end or hub office, or on all commonly owned video service networks that share a common head-end or hub office, regardless of the number of political subdivisions served from such head-end or hub office. If more than one

(1) political subdivision is served by a single or common head-end or hub office, the populations within the jurisdictions of all those political subdivisions shall be aggregated to determine the total number of PEG channels under paragraphs (a) and (b) of this subsection.

(d) PEG channels provided by a system operator may be located by the system operator on any service tier subscribed to by more than fifty percent (50%) of a system operator's subscribers. PEG channels shall be of similar quality and functionality to that offered by commercial channels on such tier of service unless the signal is provided to the system operator at a lower quality or with less functionality.

(e) A system operator shall not change a channel location assigned to any PEG channel without written notice to the affected political subdivision at least sixty (60) days before the date on which the change is to become effective.

(f) The PEG agency producing the PEG programming and transmitting it to the system operator shall ensure that all transmissions, content or programming to be transmitted to the system operator are provided or submitted in a manner or form that is capable of being accepted and transmitted by the system operator over its video service network without alteration or change in the content or transmission signal and is compatible with the technology or protocol utilized by the system operator to deliver its video service. If the PEG agency cannot produce or maintain PEG programming in that manner or form, the agency shall do so in a manner that conforms to the then existing industry standards. If a change by the PEG agency in the manner or form of the content or programming is required, and such change conforms to the then existing industry standards, the system operator shall accept such programming for transmission over its video service network in the manner that is most economical to the system operator.

(2) The production and content of any programming aired on any channel provided for PEG use shall be solely the responsibility of the public, educational and governmental agencies receiving the benefit of such capacity. The system operator shall bear the responsibility for the transmission of such content only to the extent that such content complies with the requirements of subsection (1)(f) of this section.

(3) Governmental entities utilizing channels for PEG use shall make the programming available to all video service providers providing service within such governmental entity's jurisdiction in a nondiscriminatory manner. Each system operator shall be responsible for providing one (1) point of connectivity to the governmental entity's PEG channel distribution point within the jurisdiction to be served. The governmental entity providing programming for use on a channel designated for PEG use may request a change of the point of connectivity but shall pay the system operator for all costs associated with the change of the point of connectivity.

(4) No franchising entity may require a video service provider to provide any institutional network or equivalent capacity on its video service network.

(5) Where technically feasible, a system operator shall use reasonable efforts to interconnect its video network for the purposes of sharing PEG programming with other video service providers. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. System operators shall negotiate in good faith to provide interconnection of PEG channels. The video service provider requesting interconnection shall pay all costs for such interconnection.

(6) The operation of any PEG channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the governmental entity receiving the benefit of such channel, and the system operator shall bear only the responsibility for the transmission of the programming on each such channel to subscribers and the initial cost of connecting to existing and obligated PEG access channels.

### **History.**

I.C., § 50-3010, as added by 2012, ch. 207, § 1, p. 552.

## **STATUTORY NOTES**

### **Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is



declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 50-3011. Applicability of other law.** — (1) The provisions of this chapter are intended to be construed to be consistent with the federal cable communications policy act of 1984, 47 U.S.C. sections 521 through 573.

(2) Except as otherwise stated herein, nothing in this chapter shall be interpreted to prevent an incumbent cable service provider, a nonincumbent video service provider, a system operator, a local unit of government or a franchising entity from entering into a negotiated franchise agreement with a political subdivision or seeking clarification of its rights and obligations under federal or state law or to exercise any right or authority under federal or state law.

(3) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of titles 61 and 62, Idaho Code, regarding telecommunications service within the state of Idaho, nor to require a telephone corporation to obtain a certificate of franchise authority or local authorization pursuant to this chapter for the purpose of permitting or authorizing the telephone corporation to construct, upgrade, operate or maintain its telecommunications system to provide telecommunications service.

(4) No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other local unit of government having jurisdiction over the public rights-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of any applicable local ordinance or other regulation governing the use of the public rights-of-way.

**History.**

I.C., § 50-3011, as added by 2012, ch. 207, § 1, p. 552.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this

act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”



## Chapter 31

# COMMUNITY INFRASTRUCTURE DISTRICT ACT

Sec.

50-3101. Purpose, relationship with other laws and short title.

50-3102. Definitions.

50-3103. Creation of district.

50-3104. District organization.

50-3105. District powers.

50-3106. Change in district boundaries — Amend general plan.

50-3107. Finances.

50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy.

50-3109. Special assessments — Bonds.

50-3110. Revenue bonds — Election.

50-3111. Terms of bonds.

50-3112. Notice and conduct of election.

50-3113. Cost of administration.

50-3114. Annual financial statements and estimates — Annual budget — Certification.

50-3115. Disclosure.

50-3116. Dissolution of district.

50-3117. Exemptions and exclusions.

50-3118. Limitation of liability.

50-3119. Appeal — Exclusive remedy — Conclusiveness.

50-3120. Consistency with state law.

50-3121. Severability.

**§ 50-3101. Purpose, relationship with other laws and short title. —**

(1) The purpose of this chapter is:

(a) To encourage the funding and construction of regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure;

(b) To provide a means for the advance payment of development impact fees established in chapter 82, title 67, Idaho Code, and the community infrastructure that may be financed thereby; and

(c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself.

(2) Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter.

(3) A community infrastructure district may only be formed pursuant to this chapter by a city in the city's incorporated area, or by a county in an area contained within a city's comprehensive plan with the city's consent.

(4) A community infrastructure district may be formed only after (i) prior review and approval by the governing body of each county or city in which the district is proposed to be located of a petition requesting the formation of the district, and (ii) the necessary approvals for site development under the local land use planning act, sections 67-6501 et seq., Idaho Code, and the planning and zoning ordinances of each county and city in which the district is proposed to be located have been obtained; provided however, that where there will be phased development, approvals obtained for the first phase of site development shall be sufficient for the initial creation and organization of the district. The formation of a district pursuant to this chapter shall not prevent the exercise by a county, city or other political subdivision of any of its powers on the same basis as on all other land within its jurisdiction. Notwithstanding the formation of a district, the development of real property located within the district shall remain subject to the provisions of chapter 65, title 67, Idaho Code, and the applicable planning and zoning ordinances of the counties and cities in which the district is located. The formation of a district pursuant to this chapter shall

not prevent the subsequent establishment of other districts or the improvement or assessment of land within the district by a county, city or other political subdivision.

(5) This chapter shall be known and cited as the “Community Infrastructure District Act.”

**History.**

I.C., § 50-3101, as added by 2008, ch. 410, § 1, p. 1140.

**STATUTORY NOTES**

**Prior Laws.**

Section 472 of S.L. 1967, ch. 429 repealed former chs. 1 to 46, inclusive, and chs. 48, 49, of title 50.

**§ 50-3102. Definitions.** — As used in this chapter, the following terms shall have the meanings as stated:

(1) “Assessment area” means real property within the boundaries of a community infrastructure district that is the subject of a specific special assessment as set forth in this chapter.

(2) “Community infrastructure” means improvements that have a substantial nexus to the district and directly or indirectly benefit the district. Community infrastructure excludes public improvements fronting individual single family residential lots. Community infrastructure includes planning, design, engineering, construction, acquisition or installation of such infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure, and incurring expenses incident to and reasonably necessary to carry out the purposes of this chapter. Community infrastructure includes all public facilities as defined in [section 67-8203\(24\), Idaho Code](#), and, to the extent not already included within the definition in [section 67-8203\(24\), Idaho Code](#), the following:

- (a) Highways, parkways, expressways, interstates, or other such designation, interchanges, bridges, crossing structures, and related appurtenances;
- (b) Public parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;
- (c) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;
- (d) Public safety facilities;
- (e) Acquiring interests in real property for community infrastructure;
- (f) Financing costs related to the construction of items listed in this subsection; and
- (g) Impact fees.



(3) “Community infrastructure segment” means a separate or a discernible portion of a construction contract attributable to community infrastructure.

(4) “Debt service” means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support.

(5) “District” means a community infrastructure district formed pursuant to this chapter. A district shall only include contiguous property at the time of formation. Land that is connected by only a shoestring or strip of land which comprises a railroad or highway right-of-way shall not be considered contiguous for the purposes of this chapter. Subsequent to a district’s formation, a district may include noncontiguous property but only if specifically determined by the district board to have a substantial nexus to the initial district or to the community infrastructure contemplated by the initial district, and then authorized by the district board in its discretion and pursuant to [section 50-3106, Idaho Code](#).

(6) “District board” means the board of directors of the district.

(7) “District development agreement” means an agreement between a property owner or developer, the county or city, any other political subdivision of the state, and/or the district. A district development agreement shall be used to establish obligations of the parties to the agreement relating to district financing and development, including: intergovernmental agreements; the ultimate public ownership of the community infrastructure financed by the district; the understanding of the parties with regard to future annexations of property into the district; the total amount of bonds to be issued by the district and the property taxes and special assessments to be levied and imposed to repay the bonds and the provisions regarding the disbursement of bond proceeds; the financial assurances, if any, to be provided with respect to the bonds; impact and other fees imposed by governmental authorities, including credit, prepayment and/or reimbursement with respect thereto; and other matters relating to the community infrastructure, such as construction, acquisition, planning, design, inspection, ownership and control. A district development

agreement shall be in addition to and shall not supplant any development agreement entered into pursuant to [section 67-6511A, Idaho Code](#), pursuant to which a governing body may require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel.

(8) “General plan” means the general plan described in [section 50-3103\(1\), Idaho Code](#), as the plan may be amended from time to time.

(9) “Governing body” means the county commissioners or city council that by law is constituted as the governing body of the county or city in which the district is located. Reference in this chapter to “governing body or bodies” shall mean the governing body or bodies of each county and city in which the district is located.

(10) “Owner” means the person listed as the owner of real property within the district or a proposed district on the current property rolls in effect at the time that the action, proceeding, hearing or election has begun; provided however, that if a person listed on the property rolls is no longer the owner of real property within the district or a proposed district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner shall be deemed to be the owner for the purposes of this chapter.

(11) “Market value for assessment purposes” means the amount of the last preceding equalized assessment of all taxable property and excludes all property exempt from taxation pursuant to [section 63-602G, Idaho Code](#), within the community infrastructure district on the tax rolls completed and available as of the date of approval in the district bond issuance.

(12) “Person” means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership, trust or other such entities as recognized by the state of Idaho. A “person in interest” is any person who is a qualified elector in the district, who is an owner of real property in the district or who is a real property taxpayer in the district.

(13) “Qualified elector” means a person who possesses all of the qualifications required of electors under the general laws of the state of Idaho and:

(a) Resides within the boundaries of a district or a proposed district and who is a qualified elector. For purposes of this chapter, such elector shall also be known as a “resident qualified elector”; or

(b) Is an owner of real property that is located within the district or a proposed district, who is not a resident qualified elector as set forth above. For purposes of this chapter, such elector shall also be known as an “owner qualified elector.”

(14) “Special assessment” means an assessment imposed upon real property located within an assessment area for a specific purpose and of a special benefit to the affected property, collected and enforced in the same manner as property taxes, that may be apportioned according to the direct or indirect special benefits conferred upon the affected property, as well as any or any combination of the following: acreage, square footage, front footage, the cost of providing community infrastructure for the affected property, or any other reasonable method as determined by the district board.

#### **History.**

I.C., § 50-3102, as added by 2008, ch. 410, § 1, p. 1140; am. 2012, ch. 324, § 1, p. 884.

### **STATUTORY NOTES**

#### **Amendments.**

The 2012 amendment, by ch. 324, inserted “have a substantial nexus to the district” in the first sentence in subsection (1) and substituted “but only if specifically determined by the district board to have a substantial nexus to the initial district or to the community infrastructure contemplated by the initial district, and then” for “but only as the same shall be if specifically determined and” in subsection (5).

**§ 50-3103. Creation of district.** — (1) The process for the creation and organization of a community infrastructure district shall be initiated by a petition signed by not less than two-thirds (2/3) of the district residents or by all of the owners of all the lands located in the proposed district. The petition shall be filed with the clerk of the governing body in which the proposed district will be located. If the proposed district will be located within two (2) or more counties and/or cities, a petition conforming to the requirements of this section shall be filed with the clerk of each jurisdiction's governing body. The petition shall state the name of the proposed district and the purpose for which it is formed, state that the formation of the district shall entitle the district to impose special assessments, levy property taxes and impose fees or charges to pay the cost of providing services, and shall be accompanied by a map depicting the boundaries of the proposed district, a legal description of the proposed district and a copy of the proposed general plan. The general plan shall describe or identify the community infrastructure to be financed by the district, the locations of the infrastructure and the estimated cost thereof, the proposed financing methods and the anticipated special assessments, tax levies or other charges, the approvals obtained pursuant to section 50-3101(4), Idaho Code, and may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan. The petition shall also include copies of any proposed district development agreement. The petition, together with all maps and other papers filed therewith, shall be open to public inspection in the office of the clerk in each county or city in which the petition is filed, during such business hours as the clerk may direct.

(2) Upon the filing of a petition, the governing body shall give notice of the filing of the petition and of the time and place set for a public hearing on the petition, which hearing shall be at a regular or special meeting held within not less than thirty (30) days nor more than ninety (90) days after the date of the filing of the petition. A notice of the time of the public hearing shall be published by the governing body twice, the first time not less than twelve (12) days prior to the hearing and the second time not less than five

(5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the proposed district will be located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall state that a community infrastructure district is proposed to be formed, giving the proposed boundaries thereof, and that any person who is a resident of or a real property taxpayer within the proposed district may, on the date fixed for the public hearing, appear and offer any testimony and submit written testimony prior thereto pertaining to the formation of the district and the proposed boundaries thereof. If the district will be located within two (2) or more counties and/or cities, the governing bodies of such counties and/or cities shall coordinate their efforts and shall either hold a public hearing in each county or city in which the proposed district will be located, or hold a single public meeting in such county or city as the governing bodies shall unanimously agree. The notice shall also state that any political subdivision of this state within whose jurisdiction the proposed district will be located, including, without limitation, a highway district, a school district, a fire district or an ambulance district, may, on the date fixed for the public hearing, appear and offer testimony and submit written testimony prior thereto pertaining to the formation of the district and the proposed boundaries thereof. After hearing and considering any and all of the testimony given, the governing body shall thereupon approve a resolution either denying the petition or granting the same and, if granting the same, shall fix and describe in the resolution the boundaries of the proposed district and order the formation of the same. A resolution granting the petition may also include the approval of any district development agreement that has been approved by the governing body in the process of considering and approving the formation of the district. The boards of county commissioners and/or the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Whenever a petition shall be filed as provided for in this section, the petitioner or petitioners shall deposit with each governing body a sum sufficient to defray the costs of publication and mailing of notice of the

public hearing. In the event the district is formed, said petitioner or petitioners shall be entitled to be reimbursed such sum from the district, as a district formation cost related to the community infrastructure, from the district when moneys are available to the district. The amount required to be paid under this subsection shall be determined by each governing body and deposited before publication of the notice.

(4) The governing body may charge the petitioner or petitioners a reasonable fee for the governing body to retain outside advisors to assist the governing body in its consideration of the formation of the district. In the event the district is formed, the petitioner or petitioners shall be entitled to be reimbursed such fee from the district, as a district formation cost related to the community infrastructure, when moneys are available to the district.

**History.**

**I.C., § 50-3103**, as added by 2008, ch. 410, § 1, p. 1143; am. 2012, ch. 324, § 2, p. 884.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 324, inserted “and submit written testimony prior thereto” in the fifth and seventh sentences in subsection (2).

**§ 50-3104. District organization.** — (1) If the petition for formation of the district is granted, the district shall comply with the filing and recording requirements of section 63-215, Idaho Code, and shall also cause a copy of the applicable resolution to be delivered to the county assessor of each county in which the district is located, cause a copy of the applicable resolution to be recorded with the county clerk in each county in which the district is located, and cause a copy of the applicable resolution to be filed with the state tax commission.

(2) Members of the governing body or bodies at the time of formation shall serve as the district board. If the district is located entirely within the boundaries of a city, three (3) members of the city council chosen by the city council shall serve as the district board. If the district is located entirely within the boundaries of a county and outside the boundaries of any city, the county commissioners of the county in which the district is located shall serve as the district board. If the district is located within the jurisdiction of more than one (1) governing body, two (2) members of each governing body shall be appointed by that governing body to serve on the district board and, in addition, the governing body within whose jurisdiction the largest land area of the district is located shall appoint another member from its governing body to serve as an additional member of the district board, so that the district board will always be comprised of an odd number of members. For purposes of determining which jurisdiction has such largest land area, the land area in the district that is within the incorporated city limits shall be considered as being the land area of the city and shall not be considered as part of the land area of the county in which the city is located. If an area is added to the district pursuant to [section 50-3106\(2\), Idaho Code](#), and such area is located in a city or county not already represented on the district board, or if the addition of such area changes the jurisdiction in which the largest land area of the district is located, the membership of the district board, at the time of addition of such area, shall be adjusted in conformity with the foregoing. If an area is deleted from the district pursuant to [section 50-3106\(1\), Idaho Code](#), and, as a result, a county or city no longer has area within the district, or such deletion changes the jurisdiction in which the largest land area of the district is located, the

membership of the district board, at the time of deletion of such area, shall be adjusted in conformity with the foregoing. If an area is annexed or deannexed by a city and, as a result, the jurisdiction of a county or city is changed, the membership of the district board at the time of such annexation or deannexation shall be adjusted in conformity with the foregoing. The boards of county commissioners and the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Within thirty (30) days after the date of the resolution ordering formation of the district, and annually thereafter, the district board shall meet and elect a chairman and vice-chairman to act as the officers of the district board. The district board shall, unless otherwise agreed to by a majority of the board, meet in the county or city within which the largest land area of the district is located. The district shall keep the following records, which shall be open to public inspection:

- (a) Minutes of all meetings of the district board;
- (b) All resolutions;
- (c) Accounts showing all moneys received and disbursed;
- (d) The annual budget; and
- (e) All other records required to be maintained by law.

(4) The district manager shall be the manager or equivalent of the city or county, the district treasurer shall be the treasurer of the city or county, the district clerk shall be the district clerk of the city or county, respectively, unless the district board engages an outside firm to perform the tasks of the district's manager, treasurer and clerk as well as other duties as may be prescribed by the district board. Where a district contains multiple county or city jurisdictions, the board shall designate by resolution the manager, treasurer and clerk.

(5) The district manager shall have charge and supervision of the daily operations of the district. The district manager may hire or otherwise employ and terminate the employment of such persons, including professional, supervisory and clerical employees, as may be necessary and authorized by the board.



(6) The treasurer of the district shall have such duties as the district board may prescribe, together with the duty to keep account with the district; to place to the credit of the district all moneys received by him or her from the collection of special assessments, taxes or from any other sources, and all other moneys belonging to the district, and to pay over all moneys belonging to the district on legally drawn warrants or orders of the district board.

(7) The clerk of the district shall have such duties as the district board may prescribe, together with the duty to conduct district elections and to prepare and distribute legal notices.

(8) The district shall be separate and apart from any county or city. The members of the district board, when serving in their official capacity as members of the district board, shall act on behalf of the district and not as members of a board of county commissioners or as members of a city council.

(9) The district board shall administer in a reasonable manner the implementation of the general plan.

(10) The district shall exist until dissolved pursuant to [section 50-3116, Idaho Code](#).

### **History.**

[I.C., § 50-3104](#), as added by 2008, ch. 410, § 1, p. 1144; am. 2012, ch. 324, § 3, p. 884.

## **STATUTORY NOTES**

### **Cross References.**

State tax commission, [art. VII, § 12, Idaho Const.](#) and § 63-101.

### **Amendments.**

The 2012 amendment, by ch. 324, added the last sentence in subsection (4).

**§ 50-3105. District powers.** — (1) A district formed pursuant to this chapter, although a political subdivision of this state, is not a governmental entity of general purposes and powers, but is a special limited purposes district, with powers only as permitted under this chapter, which powers include the power to finance community infrastructure consistent with the general plan and, in implementing the general plan, to:

- (a) Enter into contracts and expend moneys for any community infrastructure purposes and/or district operations;
- (b) Enter into intergovernmental agreements as provided for in [sections 67-2326 through 67-2333, Idaho Code](#);
- (c) Enter into district development agreements;
- (d) Acquire interests in real property and personal property for community infrastructure, within or without the district, and sell, dedicate, lease or otherwise dispose of district property if the sale, dedication, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;
- (e) Plan, design, engineer, acquire, construct and install community infrastructure, including acquiring, converting, renovating or improving existing facilities;
- (f) Employ and establish and pay compensation for staff, counsel and consultants;
- (g) Reimburse a county, city or other political subdivision of this state for staff and consultant services supplied by the county, city or other political subdivision;
- (h) Accept gifts or grants and incur and repay loans for any community infrastructure;
- (i) Enter into agreements with owners concerning the advance of money by owners for community infrastructure or the granting of real property by the owners for community infrastructure;

(j) Establish, impose and collect or cause to be collected special assessments on real property located within an assessment area of the district and, in conjunction with the imposition of such assessments, set and collect or cause to be collected administrative fees for community infrastructure;

(k) Levy property taxes on real property located within the district and, in conjunction with the levy of such taxes, set and collect or cause to be collected administrative fees for community infrastructure;

(l) Incur expenses of the district incident to and reasonably necessary to implement the general plan, and pay the same, including the financial, legal and administrative costs of the district;

(m) Borrow money and incur indebtedness and evidence the same by certificates, notes, bonds or debentures, and enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of its bonds;

(n) Use public easements and rights-of-way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights-of-way, whether in or out of the geographical limits of the district, county or city; and

(o) Sue and be sued and prosecute and defend, at law or in equity.

(2) Community infrastructure other than personalty, may be located only in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof.

(3) An agreement pursuant to subsection (1) of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued, or from advances, fees and charges collected from other owners or users or those having a right to use any community infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

(4) With respect to goods, services or construction to be paid for or financed pursuant to this chapter, the district, as a political subdivision of

this state, shall comply with all applicable procurement statutes of this state, including [section 67-2320, Idaho Code](#), and chapter 28, title 67, Idaho Code.

**History.**

[I.C., § 50-3105](#), as added by 2008, ch. 410, § 1, p. 1146.

**§ 50-3106. Change in district boundaries — Amend general plan. —**

(1) After district formation, an area may be deleted from the district only following notice and hearing in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board, and by voter approval by the qualified electors as provided in section 50-3112, Idaho Code. Lands within the district that are subject to the lien of property taxes, special assessments or other charges imposed pursuant to this chapter shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, assessments or charges.

(2) After district formation, an area may be added to the district upon adoption of a resolution of intention to do so by the district board and the approvals of all the owners of the lands to be added and the governing body of each county or city within which such lands are located, subject to notice, hearing and adoption of a resolution in the manner as required for the formation of a district.

(3) If an area is deleted or added under subsection (1) or (2) of this section, the district board shall attend to the recording and filing requirements set forth in [section 63-215, Idaho Code](#), and shall also cause a copy of the applicable resolution to be delivered to the county assessor of each county in which the district is located, cause a copy of the applicable resolution to be recorded with the county clerk in each county in which the district is located, and cause a copy of the applicable resolution to be filed with the state tax commission.

(4) The district board, following notice and hearing in the manner prescribed for the formation hearing, may amend the general plan in any manner that it determines will not substantially reduce the benefits to be received by any land within the district from the community infrastructure upon completion of the work to be performed under the general plan. No election shall be required for the purposes of this subsection.

**History.**

[I.C., § 50-3106](#), as added by 2008, ch. 410, § 1, p. 1147.

**STATUTORY NOTES**

**Cross References.**

State tax commission, [art. VII, § 12, Idaho Const.](#) and § 63-101.

**§ 50-3107. Finances.** — (1) Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter.

(2) Community infrastructure to be financed or acquired, or publicly or privately constructed pursuant to this chapter shall be subject to the required bidding procedures for any Idaho public agency.

(3) Community infrastructure shown in the general plan may be financed from the following sources of revenue: (a) Proceeds received from the sale of bonds of the district; (b) Moneys of a county or city contributed to the district; (c) Property taxes or special assessments; (d) State or federal grants or contributions; (e) Private contributions;

(f) User, landowner and other fees and charges; (g) Proceeds of loans or advances; and

(h) Any other moneys available to the district by law.

(4) The amount of indebtedness evidenced by general obligation bonds issued pursuant to [section 50-3108, Idaho Code](#), special assessment bonds issued pursuant to [section 50-3109, Idaho Code](#), and revenue bonds issued pursuant to [section 50-3110, Idaho Code](#), shall not exceed the estimated cost of the community infrastructure to be financed with such bonds, plus all costs connected with the issuance and sale of such bonds, including formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding principal amount of general obligation bonds and other indebtedness for which the full faith and credit of the district are pledged shall not affect the general obligation bonding capacity of any county or city in which the district is located.

(5) Bonds issued by a district shall not be a general obligation of this state or any political subdivision thereof, including any county or city in which the district is located and shall not pledge the full faith and credit of this state or any political subdivision thereof, including any county or city in which the district is located.

**History.**

I.C., § 50-3107, as added by 2008, ch. 410, § 1, p. 1148.

## **STATUTORY NOTES**

### **Cross References.**

Purchasing by political subdivisions, § 67-2801 et seq.



**§ 50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy.** — (1) After district formation, whenever the district board shall deem it advisable to issue general obligation bonds of the district, the district board shall provide therefor by resolution, which resolution shall specify and set forth the community infrastructure and other costs and expenses approved by the district board consistent with the general plan to be financed with the bonds, and make provision for the collection of an annual tax sufficient to pay the interest on the bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof as required by the constitution and laws of the state of Idaho.

(2) The resolution shall also provide for holding an election, held in compliance with [section 50-3112, Idaho Code](#), to submit to the qualified electors of the district the question of authorizing the district to issue general obligation bonds of the district to provide money for said community infrastructure consistent with the general plan. The ballot used in such election shall be in form substantially as follows: “In favor of issuing bonds to the amount of ..... dollars for the purpose stated in Resolution No. ...,” and “Against issuing bonds to the amount of ..... dollars for the purpose stated in Resolution No. ...”.

(3) If two-thirds (2/3) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without the further vote of the qualified electors, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases; provided however, that before any issuance of the bonds, including issuance in series or divisions and, in addition to such other determinations made by the district board as it may deem reasonable and prudent, the district board shall also

determine whether reasonable financial assurance for the payment of the debt service on the bonds through additional collateral, payment guarantee or otherwise shall be required from a developer. The developer shall be consulted and shall be given a reasonable period of time within which to appear, either in person or in writing, and respond to any proposed financial assurance. If, following such developer's response, the district board determines that reasonable financial assurance shall be required, the district board shall specify the type and amount of the financial assurance required in its resolution.

(4) In no event shall the aggregate outstanding principal amount of general obligation bonds and any other indebtedness for which the full faith and credit of the district are pledged exceed nine percent (9%) of the actual or adjusted market value for assessment purposes on all taxable real property within the district as such valuation existed on December 31 of the previous year.

(5) After the bonds are issued, the district shall enter in its minutes a record of the bonds sold and their number and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Bond proceeds received by the district shall be held in a segregated account and shall be disbursed therefrom only for:

(a) The payment of community infrastructure and/or community infrastructure segments approved by the district board and actually completed; or

(b) For the purpose of reimbursing actually paid expenditures relating to community infrastructure as approved by the district board; provided however, that lien releases with respect to the payment made must be obtained from the underlying providers of labor, work, services or materials as a condition to such payment; or

(c) For the payment or reimbursement of governmentally imposed impact fees as approved by the district board.

(7) Completion of community infrastructure may be phased and payment made pursuant to a draw schedule. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to

issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within that time.

(8) Each year, prior to the time for the certification required under [section 50-3114, Idaho Code](#), the district board shall levy a tax upon all taxable real property within the district, sufficient, together with any money from the sources described in [section 50-3107\(3\), Idaho Code](#), to pay debt service on the bonds when due. The levy shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located the certification required under [section 50-3114, Idaho Code](#). Such tax levied shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. Moneys derived from the levy of property taxes to pay the debt service on the bonds shall be kept separately from other funds of the district. A district's levy of property taxes shall constitute a lien on all taxable real property within the district.

(9) The district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by this section. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided that the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

#### **History.**

[I.C., § 50-3108](#), as added by 2008, ch. 410, § 1, p. 1148; am. 2012, ch. 324, § 4, p. 884.

### **STATUTORY NOTES**

#### **Amendments.**

The 2012 amendment, by ch. 324, substituted “nine percent (9%)” for “twelve percent (12%)” in subsection (4).

**§ 50-3109. Special assessments — Bonds.** — (1) After district formation, upon the submission of a petition signed by no fewer than two-thirds (0.6667) of the owners of all the lands located in a proposed assessment area, the district board shall adopt a resolution ordering that a hearing be held to determine whether a special assessment should be imposed and special assessment bonds be issued to provide money for community infrastructure consistent with the general plan and the exercise by the district board of any of its powers under section 50-3105, Idaho Code.

(2) Notice of the hearing shall be posted in three (3) public places within the boundaries of the district not less than thirty (30) days before the hearing. Notice of the hearing shall also be published twice, the first time not less than twelve (12) days prior to the hearing and the second time not less than five (5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the district is located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall include the following:

- (a) A description of the real property to be included within the assessment area;
- (b) A description of the method by which the amount of the proposed special assessment will be determined for each class of real property to which the special assessment is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special assessment;
- (c) A description of the community infrastructure to be financed with special assessment bonds or revenues; and

(d) A statement that any person affected by the proposed special assessment may object in writing or in person at the hearing.

(3) If, after the hearing, the district board finds that it will be for the best interest of the district and the real property within the assessment area that the aggregate fair market value of the real property within the assessment area, including the value of the community infrastructure to be financed or paid for with the special assessments, and the infrastructure for which performance bonds or other financial assurances have been received, is at least three (3) times the aggregate principal amount of the special assessment bonds as determined by an MAI appraisal in form and substance acceptable to the district board, the district board shall adopt a resolution approving the imposition of the special assessment and, also by resolution, shall prepare a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of real property assessed, showing the amount chargeable to each such lot or parcel, and finding that each such lot or parcel is benefited to the amount of assessment imposed thereon. Such resolution shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof imposed on each such lot or parcel. Special assessments may be prepaid and permanently satisfied in whole or in part at any point in time. Prepayment of special assessments shall be paid in cash to the district in the following manner: (i) the interest on such portion to the next date special assessment bonds may be redeemed, plus (ii) the unpaid principal amount of such portion rounded up to the next highest multiple of one thousand dollars (\$1,000), plus (iii) any premium due on such redemption date with respect to such portion, plus (iv) any administrative or other fees charged by the district with respect thereto, less (v) the amount by which any reserve fund associated with the special assessment may be reduced on the redemption date as a result of such prepayment.

(4) Special assessment bonds approved at the hearing shall be issued in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without further hearing, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or

projects in phases. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within such time.

(5) After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Each year, prior to the time for the certification required under [section 50-3114, Idaho Code](#), the district board shall impose a special assessment upon the real property within the assessment area of the district that will be subject to the special assessment sufficient, together with any moneys from the sources described in [section 50-3107\(3\), Idaho Code](#), to pay debt service on the bonds when due, in addition to reasonable costs associated with the collection of the special assessment payments. The special assessment shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located, the certification required under [section 50-3114, Idaho Code](#). Such special assessment shall then be collected and accounted for at the time and in the form and manner as property taxes are collected and accounted for under the laws of this state. Moneys derived from the imposition of the special assessment to pay the debt service on the bonds shall be kept separately from other moneys of the district.

(7) Special assessments against privately owned residential property shall be subject to the following provisions:

(a) The maximum amount of any special assessment that may be imposed shall not be increased over time by any amount exceeding two percent (2%) per year, up to a maximum of ten percent (10%);

(b) The special assessment shall be imposed for a specified time period, after which no further special assessment shall be imposed and collected; and

(c) Subject to the applicable laws of this state, nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special assessment imposed upon a parcel whose size or use is changed. A change in the amount of a special assessment imposed upon a parcel due to a change in its size or use shall not require notice and hearing, if the method for changing the amount of special assessment was approved at the hearing approving the special assessment and was described in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special assessment.

(8) A district's imposition of a special assessment shall constitute a lien on the real property within the assessment area subject to the special assessment, including real property acquired by the state or its political subdivisions after the imposition of the special assessment, which shall be effective during the period in which the special assessment is imposed and shall have a priority coequal to the lien of real property taxes. A special assessment shall be subject to foreclosure by the district in the same manner as real property tax liens under the laws of this state, provided that a special assessment shall be subject to foreclosure at any time after thirty (30) days following written notice of delinquency to the owner of the real property to which the delinquency applies. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special assessment shall be deposited in the special bond fund for payment of any obligations secured thereby.

(9) No holder of special assessment bonds issued pursuant to this chapter may compel any exercise of the taxing power of the district, county or city to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to this chapter are not a debt of the state of Idaho or any political subdivision thereof including the district, county or city, nor is the payment of special assessment bonds enforceable out of any moneys other than the revenue pledged to the payment of the bonds.

(10) Subject to the provisions of this section, a district may issue special assessment bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases, and payment may be made pursuant to a draw schedule.



(11) The district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized in this chapter. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

**History.**

**I.C., § 50-3109**, as added by 2008, ch. 410, § 1, p. 1150; am. 2012, ch. 324, § 5, p. 884.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 324, in subsection (1), substituted “no fewer than two-thirds (0.6667) of the owners” for “all the owners” and deleted “or whenever the district board shall deem it advisable” preceding “the district board shall adopt”.

**§ 50-3110. Revenue bonds — Election.** — (1) Subject to section 3, article VIII, of the constitution of the state of Idaho, after district formation, whenever the district board shall deem it advisable to issue revenue bonds of the district, the district board shall provide therefor by resolution, which resolution shall specify and set forth the community infrastructure consistent with the general plan to be financed with such bonds.

(2) The resolution shall also provide for holding an election, held in compliance with [section 50-3112, Idaho Code](#), to submit to the qualified electors of the district the question of authorizing the district to issue revenue bonds of the district to provide moneys for such community infrastructure consistent with the general plan.

(3) Except as otherwise specifically set forth in this section, the provisions of the water and sewer district revenue bond act codified in chapter 41, title 42, Idaho Code, shall apply with respect to the issuance of revenue bonds and refunding bonds under this section in substantially the same manner as if the district were a water and/or sewer district issuing bonds pursuant to the water and sewer district revenue bond act, and the district board shall conduct itself in the issuance of revenue bonds in substantially the same manner as the commissioners of a district under the water and sewer district revenue bond act.

(4) If the revenue bonds are approved at the election, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and such bonds shall be issued and sold in the manner provided by the laws of the state of Idaho.

(5) After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Money derived from the collection of revenues pledged to pay the debt service on the bonds shall be kept separately from other moneys of the district.

(7) No holder of revenue bonds issued pursuant to this chapter may compel any exercise of the taxing power of the district, county or city to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to this chapter are not a debt of the state or any political subdivision thereof, including any county or city in which the district is located, nor are they the debt of the district, other than with respect to the revenue pledged to the payment of the bonds. The payment of revenue bonds is not enforceable out of any money other than the revenue pledged to the payment of the bonds.

(8) Subject to the provisions of this section, a district may issue revenue bonds at such times and in such amounts as the district deems appropriate to carry out a project in phases.

(9) The district may issue and sell refunding bonds to refund revenue bonds of the district authorized by this section. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

**History.**

I.C., § 50-3110, as added by 2008, ch. 410, § 1, p. 1153.

**§ 50-3111. Terms of bonds.** — For any bonds issued under this chapter, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty (30) years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds, up to the aggregate authorized principal amount thereof, may be issued in whole or divided into series, and by supplementary resolution adopted from time to time by the district board, the district may issue any remaining principal amount of the bonds in one (1) or more subsequent divisions. No election shall be required in connection with the issuance of any remaining principal amount of the bonds in a subsequent division. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by this chapter. Pending that use, the proceeds may be invested as determined by the district board. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper. The bonds may be payable from any combination of taxes or revenues of the types described in sections 50-3108, 50-3109 and 50-3110, Idaho Code.

**History.**

I.C., § 50-3111, as added by 2008, ch. 410, § 1, p. 1154.

**§ 50-3112. Notice and conduct of election.** — (1) Any election pursuant to this chapter shall be a nonpartisan election, and in regard to election dates, shall be held in compliance with section 34-106, Idaho Code, or section 50-405, Idaho Code. Except as otherwise specifically set forth in this section, the district board shall cause the election to be held and conducted in the same manner prescribed by law for the holding of general elections in this state, including chapter 14, title 34, Idaho Code, and shall call the election by posting notices in three (3) public places within the boundaries of the district not less than thirty (30) days before the election. Notice shall also be published twice, the first time not less than twelve (12) days prior to the election and the second time not less than five (5) days prior to the election, in a newspaper of general circulation in each county or city in which the proposed district is located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall state:

- (a) The place of holding the election;
- (b) Subject to [section 34-1409, Idaho Code](#), the hours during the day in which the polls will be open;
- (c) If the election is a bond election, whether the bonds are general obligation bonds or revenue bonds, the total principal amount of bonds to be authorized, whether the bonds will be issued in series, the maximum rate of interest to be paid on the bonds and the maximum term of the bonds, not exceeding thirty (30) years;
- (d) If the election is an election to change or eliminate an existing tax, the maximum tax amount to be imposed as a result of the change or elimination;
- (e) The purposes for which property taxes levied and revenues raised will be used, including a description of the community infrastructure to be

financed with tax revenues, district revenues or bond proceeds;

(f) That the imposition of property taxes will result in a lien for the payment thereof on real property within the district; and

(g) That a general plan is on file with the county clerk of each county in which the district is located.

(2) The district board shall determine the date of the election and the polling place or places for the election. The district board may establish, change, and consolidate election precincts within the district, as it deems necessary and appropriate, and shall define precinct boundaries.

(3) Subject to section 50-3102(10) and (13), Idaho Code, the current property rolls for the district and current voter lists in effect at the time that the election has begun shall be used to determine the qualified electors. If the district includes land lying partly in and partly out of any precinct, the voter lists may contain the names of all electors in the precinct, and the precinct boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a qualified elector.

(4) If the district is to be located within two (2) or more counties and/or cities, the election shall be held on the same day in each jurisdiction.

(5) The ballot material provided to each voter shall include:

(a) For an election concerning the issuance of bonds, an impartial description of the bonds to be issued and an impartial description of the property taxes to be imposed; the method of apportionment, collection and enforcement and other details sufficient to enable each qualified elector to reasonably estimate the amount of tax he or she will be obligated to pay; and a statement that the issuance of the bonds and the imposition of property taxes is for the provision of certain, but not necessarily all, community infrastructure that may be needed or desirable within the district, and that other taxes or assessments by other governmental entities may be presented for approval by qualified electors; and

(b) For an election to change an existing maximum tax or eliminate an existing tax, an impartial description of the change or elimination.

(6) Within ten (10) days after an election, the district board shall meet and canvass the returns, and declare the results thereof. At least a two-thirds (2/3) majority of the votes cast at the election shall be required for issuing bonds or changing an existing tax. The canvass may be continued for an additional period not to exceed thirty (30) days at the election of the district board for the purpose of completing the canvass. Failure of a required majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election. The canvass of any general obligation bond election shall be filed and recorded in each county in which the district is located.

(7) In any election held pursuant to this chapter, every voter may vote at any election held pursuant to this chapter, but shall be entitled to cast votes, as follows: (i) each resident qualified elector shall be entitled to one (1) vote; and (ii) each owner qualified elector shall be entitled to one (1) vote. An owner qualified elector shall not be entitled to an additional vote as a result of also being a resident of the district. When record title is held in more than one (1) name, the owners shall file with the clerk of the district at or prior to the election a designation in writing, of which one of the owners shall be deemed the owner for purposes of voting.

(8) In conducting an election, the polling official may require evidence of ownership of property and designation of the power to exercise the vote of any owner consistent with the provisions of this section and [section 50-3102\(10\), Idaho Code](#).

### **History.**

[I.C., § 50-3112](#), as added by 2008, ch. 410, § 1, p. 1155; am. 2019, ch. 161, § 9, p. 526.

## **STATUTORY NOTES**

### **Amendments.**

The 2019 amendment, by ch. 161, substituted “[section 50-405, Idaho Code](#)” for “[section 50-429, Idaho Code](#)” at the end of the first sentence in subsection (1); and substituted “section 50-3102(10) and (13), Idaho Code” for “sections 50-3102(10) and 50-3102(13), Idaho Code” near the beginning of the first sentence in subsection (3).

**§ 50-3113. Cost of administration.** — Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board may levy a tax upon all taxable real property within the district of up to one-hundredth of one percent (.01%) of the market value for assessment purposes on all taxable real property within the district, to be used only to reimburse or defray the administrative expenses of the district pursuant to a district development agreement. No election shall be required. The levy shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located, the certification required under section 50-3114, Idaho Code. Such tax shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state.

**History.**

I.C., § 50-3113, as added by 2008, ch. 410, § 1, p. 1157.



**§ 50-3114. Annual financial statements and estimates — Annual budget — Certification.** — (1) When levying property taxes or imposing special assessments, and prior to certification of same to the county commissioners, the district board shall make annual statements and estimates of the administrative expenses of the district, the costs of community infrastructure to be financed by property taxes and special assessments and the amount of all other expenditures for community infrastructure proposed to be paid from property taxes and special assessments and of the amount to be raised to pay general obligation bonds and special assessment bonds of the district, all of which shall be provided for by the levy, imposition and collection of property taxes and special assessments. The annual estimates prepared by the district board shall include an amount determined by the district board, in consultation with the county tax collector, to defray the costs imposed upon the county tax collector's office for any additional administrative services that will be required in the collection of and accounting for such district property taxes and special assessments. Such additional costs shall be for those services not otherwise included in the general tax collection and accounting services already provided by the county tax collector's office and otherwise paid for by property tax revenues, and shall be reasonably related to, but shall not exceed, the actual cost of the additional administrative services provided. The district board shall file the annual statements and estimates with the district clerk and, not later than the time required by section 63-802A, Idaho Code, shall set and notify the county clerk of the date and location set for the annual budget hearing of the district. The district board shall publish a notice of the filing of the estimate, shall hold a public hearing on the portion of the estimate not relating to debt service on general obligation bonds and special assessment bonds and shall adopt a budget. Notice of the budget hearing shall be posted at least ten (10) days prior to the date of said meeting in at least one (1) conspicuous place within the district to be determined by the district board; a copy of the notice shall also be published in a newspaper of general circulation in the county or city in which the proposed district is located, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of the hearing shall be specified in said notice, as well as the place where the budget may be examined prior to the

hearing. A full and complete copy of the proposed budget shall be published with and as a part of the publication of the notice of hearing. The budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this section provided, at such place and during such business hours as the district board may direct. A quorum of the district board shall attend the hearing and explain the proposed budget and hear any and all objections to the proposed budget. The district board at the time of the certification required under subsection (2) of this section shall file with the board of county commissioners in each county in which the district is located a certified copy of the annual budget as previously prepared, approved and adopted.

(2) The district board, having determined the total amount required from property taxes and special assessments to raise the amount of money fixed by the annual budget, including the amount of money needed to satisfy annual bond payments, shall cause the amount of money so determined to be certified in dollars to the board of county commissioners in each county in which the district is located not later than the time required for certification under [section 63-803, Idaho Code](#). Said certification shall list separately each tax levy and special assessment if more than one (1), and the purpose of each thereof, and shall otherwise comply with the requirements of [section 63-803, Idaho Code](#).

(3) Following such certification to the county commissioners, district property taxes and special assessments shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. Except as specifically provided otherwise in this chapter, all statutes of this state relating to the levy, imposition, collection, settlement and payment of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes and special assessments, apply to district property taxes and special assessments.

### **History.**

[I.C., § 50-3114](#), as added by 2008, ch. 410, § 1, p. 1157.

**§ 50-3115. Disclosure.** — (1) The district board shall record with the county clerk in each county in which the district is located, upon the records of each parcel of real property within the district that will be encumbered with any future general obligation bond or special assessment bond repayment liability, a notice setting forth:

(a) The current obligation of a property owner within the district with respect to any bond repayment liability; (b) That the obligation to retire the bonds will be the responsibility of any property owner in the district through the payment of real property taxes and special assessments collected by the county treasurer in addition to all other property tax payments; (c) The estimated maximum tax or special assessment rate upon the parcel for bond repayment; (d) Whether the tax or special assessment rate is to be maintained at any level by means of any developer agreement with the district; and (e) That in the event of the failure to maintain the tax rate, the tax rate on a parcel will increase, as needed, to provide for bond repayment.

(2) Such notice may be separately recorded or included in a recorded district development agreement. The governing body, in its resolution approving formation of the district, shall require that a form disclosure, consistent with the foregoing, be signed and acknowledged by any purchaser of land within the district prior to purchase. The form disclosure shall be entitled “CID TAX AND SPECIAL ASSESSMENT DISCLOSURE NOTICE” and shall specifically and conspicuously set forth “YOU ARE PURCHASING REAL PROPERTY THAT IS INCLUDED WITHIN THE BOUNDARIES OF A COMMUNITY INFRASTRUCTURE DISTRICT.” Further, the notice shall set forth such other notifications as determined appropriate by the district board that shall fully and fairly disclose the property owner’s general obligation bond and special assessment repayment liability with examples provided.

### **History.**

I.C., § 50-3115, as added by 2008, ch. 410, § 1, p. 1158.

**§ 50-3116. Dissolution of district.** — (1) The district shall be dissolved by the district board by a resolution of the district board upon a determination that each of the following conditions exist:

(a) All community infrastructure owned by the district has been, or provision has been made for all community infrastructure to be conveyed, either to the state of Idaho or to a political subdivision thereof, which shall include a county or city in which the district is located, or to a public district or other authority authorized by the laws of this state to own such community infrastructure;

(b) The district has no outstanding bond obligations; and

(c) All obligations of the district pursuant to any contracts or agreements entered into by the district have been satisfied.

(2) All property within the district that is subject to the lien of district taxes or special assessments shall remain subject to the lien for the payment of general obligation bonds or special assessment bonds, as the case may be, notwithstanding dissolution of the district. The district shall not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds, either at maturity or prior redemption, has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

(3) The district shall send a notice of dissolution to the governing body or bodies, the county assessor of each county in which the district is located, and the state tax commission. The district shall also record a notice of dissolution with the county clerk in each county in which the district is located.

(4) Subject to the foregoing provisions of this section, if upon dissolution of the district there remain any excess moneys of the district, the district board shall, by resolution, cause the same to be fairly distributed among the current taxpayers of the district. If, as determined in the sole discretion of

the district board, the amount to be distributed is de minimis, or the administrative cost of distribution is prohibitive, such remaining moneys shall be paid to the county treasurer of each county in which the district is located to be distributed among the cities and counties in which the district is located in proportion to which said cities and counties receive property tax revenues generally.

**History.**

I.C., § 50-3116, as added by 2008, ch. 410, § 1, p. 1159.

**STATUTORY NOTES**

**Cross References.**

State tax commission, art. VII, § 12, Idaho Const. and § 63-101.

**§ 50-3117. Exemptions and exclusions.** — (1) All public utilities, as defined in section 61-129, Idaho Code, shall be exempt from taxation under this chapter.

(2) No railroad right-of-way may be included within a community infrastructure district without the consent of the railroad.

(3) No personal property within a community infrastructure district shall be subject to taxation under this chapter.

**History.**

I.C., § 50-3117, as added by 2008, ch. 410, § 1, p. 1159.

**§ 50-3118. Limitation of liability.** — Neither any member of the district board nor any person acting on behalf of the district, while acting within the scope of his or her authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

**History.**

I.C., § 50-3118, as added by 2008, ch. 410, § 1, p. 1160.

**§ 50-3119. Appeal — Exclusive remedy — Conclusiveness.** — Any person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district, including, with respect to any tax levy, special assessment or bond, may, within sixty (60) days after such final decision, seek judicial review by filing a written notice of appeal with the clerk of the district and with the clerk of the district court for the judicial district in which a majority of the land area of the district is located. After said sixty (60) day period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed. With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

**History.**

I.C., § 50-3119, as added by 2008, ch. 410, § 1, p. 1160; am. 2012, ch. 324, § 6, p. 884.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 324, substituted “sixty days (60)” for “thirty days (30)” in the first and second sentences.



**§ 50-3120. Consistency with state law.** — (1) A community infrastructure district shall develop community infrastructure consistent with the general plan and in compliance with the requirements of chapter 13, title 50, Idaho Code, and chapter 65, title 67, Idaho Code.

(2) A community infrastructure district shall be deemed to be of the same nature and afforded the same treatment as a local improvement district for purposes of application of [section 58-336, Idaho Code](#), relating to lands benefitting by such district; [section 67-8209, Idaho Code](#), authorizing development impact fee credits; and [section 67-8214, Idaho Code](#), providing that other powers and rights of governmental entities are not affected.

**History.**

[I.C., § 50-3120](#), as added by 2008, ch. 410, § 1, p. 1160.

**§ 50-3121. Severability.** — The provisions of this chapter are hereby declared to be severable and if any provision or the application of the provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

**History.**

I.C., § 50-3121, as added by 2008, ch. 410, § 1, p. 1160.

## **Title 51**

# **NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS**

### Chapter

Chapter 1. Revised Uniform Law on Notarial Acts (2018), §§ 51-101 — 51-133.

Chapter 2. Commissioners of Deeds. [Repealed.]



## Chapter 1

### REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)

Sec.

51-101. Short title.

51-102. Definitions.

51-103. Applicability.

51-104. Authority to perform notarial act.

51-105. Requirements for certain notarial acts.

51-106. Personal appearance required.

51-107. Identification of individual.

51-108. Authority to refuse to perform notarial act.

51-109. Signature if individual unable to sign.

51-110. Notarial act in this state.

51-111. Notarial act in another state.

51-112. Notarial act under authority of federally recognized Indian tribe.

51-113. Notarial act under federal authority.

51-114. Foreign notarial act.

51-114A. Notarial act performed by remotely located individual.

51-115. Certificate of notarial act.

51-116. Short form certificates.

51-116A. Acknowledgment by entity on behalf of another entity.

51-117. Official stamp.

51-118. Stamping device.

51-119. [Reserved.]

- 51-120. Notification regarding performance of notarial act on electronic record — Selection of technology — Acceptance of tangible copy of electronic record.
- 51-121. Commission as notary public — Qualifications — No immunity or benefit — Reappointment.
- 51-122. Course of study.
- 51-123. Grounds to deny, revoke, suspend or condition commission of notary public.
- 51-124. Database of notaries public.
- 51-125. Prohibited acts.
- 51-126. Validity of notarial acts.
- 51-127. Rules.
- 51-128. Notary public commission in effect.
- 51-129. Savings clause.
- 51-130. Uniformity of application and construction.
- 51-131. Relation to electronic signatures in global and national commerce act.
- 51-132. Filing fees.
- 51-133. Notary fee.

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## **COMMENT TO OFFICIAL TEXT**

### **PREFATORY NOTE**

This version of the Uniform Law on Notarial Acts (“ULONA”) is a comprehensive revision of the Uniform Law on Notarial Acts as approved by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 1982. Since that date, countless societal and technological as well as market and economic changes have occurred requiring notarial officers and the notarial acts that they perform to adapt. In addition, there

has been a growing non-uniformity among the states in their laws regarding notarial acts. This version of ULONA adapts the notarial process to accommodate those changes, makes the Act more responsive to current transactions and practices, and seeks to promote uniformity among state laws regarding notarial acts.

Perhaps the most pervasive change since the adoption of the original version of ULONA has been the development and growing implementation of electronic records in commercial, governmental, and personal transactions. In 1999, NCCUSL approved the Uniform Electronic Transactions Act (“UETA”), thereby validating electronic records and putting them on a par with traditional records written on tangible media. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Ch. 96 (2010) (“ESign”) was adopted in 2000, and it also recognized and put electronic records on a par with traditional records on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act (“URPERA”), thereby permitting county recorders and registrars to accept and register electronic real estate records. Each of those acts also recognized the validity of electronic notarial acts (UETA § 11; ESign § 101(g); URPERA § 3(c)).

This revision of ULONA further recognizes electronic notarial acts and puts them on a par with notarial acts performed on tangible media (Section 2(5)). It does this by unifying the requirements for and treatment of notarial acts, whenever possible, regardless of whether the acts are performed with respect to tangible or electronic media. While continuing the basic treatment of electronic notarial acts provided in UETA, ESign and URPERA, this Act implements structural and operational rules for those notarial acts that were absent in the prior laws. For example, Section 15 sets forth the requirements for certificates of notarial acts whether performed with respect to tangible and electronic records). In addition, Section 20 provides that before notaries public may perform notarial acts with respect to electronic records, they must first notify the commissioning officer or agency.

The Act seeks to provide integrity in the process of performing notarial acts. Regardless of whether the notarial act is completed on a tangible or an electronic record, it requires an individual to appear personally before a notarial officer whenever the officer performs a notarial act regarding a

record signed or a statement made by the individual (Section 6), including an acknowledgment, verification, or witnessing of a signature (Section 5(a), (b), and (c)). A notarial officer who certifies a copy of a record must determine that the copy is a full, true, and accurate transcription or reproduction (Section 5(d)).

The Act commands a notarial officer to identify an individual before performing a notarial act for that individual. The Act provides two methods of performing that identification. Identification may be based on personal knowledge of the individual by the notarial officer (Section 7(a)). If an individual is not personally known to the notarial officer, the individual must provide satisfactory evidence of the individual's identity, which may be through the use of an identification credential or by means of an oath or affirmation of a credible witness (Section 7(b)). A notarial officer may require additional identification of an individual if the officer is not satisfied with the individual's identity (Section 7(c)). Furthermore, if an officer is not satisfied that an individual's signature is knowingly and voluntarily made or has concern as to the competency or capacity of the individual, the officer may refuse to perform the notarial act (Section 8(a)).

The Act strives to provide other assurances that also enhance the integrity of the notarial process. In addition to the familiar assurances when tangible records are used, the Act requires the use of tamper-evident technologies on electronic records (Section 20). It authorizes a commissioning officer or agency to adopt rules to implement this Act (Section 27(a)), including rules to insure that any change or tampering with a record bearing a certificate of the notarial act will be self-evident (Section 27(a)(2)). In order to encourage uniformity and interoperability, it provides that a commissioning officer or agency will consider national standards, the standards and customs of other enacting jurisdictions, and the views of interested persons (Section 27(b)).

Another means of assuring the integrity of the notarial process, strongly urged by commissioning officers and notarial associations, is to require that all notaries public maintain journals chronicling all notarial acts. This position is not without controversy, however, and other voices strongly argue that such requirements are unnecessarily burdensome. This Act includes optional provisions requiring a notary public to maintain a journal of all notarial acts that the notary public performs (Section 19), leaving the ultimate decision to the several states. A journal may be maintained on



either a tangible or electronic medium, but not both at the same time. It further specifies the information that must be entered in the journal.

This Act replaces past references to a notarial seal with an official stamp. It defines an official stamp as a physical or electronic image and includes the traditional seal (Section 2(8)). Section 17 states the mandatory contents of the official stamp and requires that it be capable of being copied along with the record with which it is associated. Section 18 deals separately with the stamping device, which is defined as the means of affixing the official stamp to a tangible record or associating the official stamp with an electronic record (Section 2(13)). Section 18 also defines the responsibility of the notary public for controlling the stamping device and assuring that it not be used by others.

As with the prior version of the Act, this revision continues to recognize notarial acts performed by notarial officers in the adopting state (Section 10), another state of the United States (Section 11), or under federal authority (Section 13). It also recognizes notarial acts performed under the authority of a federally recognized Indian tribe (Section 12). The increasing frequency of international transactions requires the recognition of notarial acts performed in foreign states (Section 14). The Act continues to recognize an “apostille” complying with the Convention de La Haye du 5 octobre 1961 (“Hague Convention”) as a means of providing conclusive authentication of notarial acts that are performed by a notarial officer of a foreign state (Section 14(e)). It also recognizes a consular authentication as an alternative means of providing that conclusive authentication of a foreign notarial act (Section 14(f)).

The prior version of this Act did not contain a licensing procedure for notaries public. As a result, the various states adopted their own provisions. Those provisions vary considerably. In order to promote unity, the Act establishes minimum requirements for the commissioning of notaries public (Section 21) as well as grounds to deny, suspend, or revoke those commissions (Section 23). The Act contains an optional section regarding educational and testing requirements for notaries public (Section 22).

The Act seeks to assure that a notarial officer does not act in a deceptive or fraudulent manner. It prohibits a notarial officer from performing a notarial act with regard to a record to which the officer or the officer’s

spouse is a party or in which either of them has a direct beneficial interest (Section 4(b)). The Act prohibits a notary public from drafting legal records, giving legal advice, or otherwise practicing law. It also prohibits a notary public from acting as a consultant or expert on immigration matters or representing persons in judicial or administrative proceedings in that regard (Section 25(a)). It further prohibits a notary public from engaging in false or deceptive advertising. In that regard, it expressly prohibits a notary public from representing or advertising that the notary may draft legal documents, give legal advice, or otherwise practice law; any representation or advertisement by a notary must contain a disclaimer to that effect in each language used in the advertisement (Section (25(b), (c), and (d)).

During the process of drafting this revision of ULONA, the Drafting Committee received invaluable assistance regarding current and developing notarial practices, regulatory matters, and available technology from numerous observers. The Drafting Committee wishes to express its appreciation to the National Notary Association, the United States Notary Association, the National Association of Secretaries of State, the Property Records Industry Association, the various vendors who demonstrated available technology, and all the other observers who assisted the Committee.

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**§ 51-101. Short title.** — This chapter shall be known and may be cited as the “Revised Uniform Law on Notarial Acts (2018).”

**History.**

**I.C., § 51-101**, as added by 2017, ch. 192, § 3, p. 440; am. 2019, ch. 160, § 2, p. 521.

## STATUTORY NOTES

**Prior Laws.**

Former chapter 1 of Title 51, Idaho Notary Public Act, which comprised the following sections, was repealed by S.L. 2017, ch. 192, § 1, effective July 1, 2017.

51-101. Short title. [**I.C., § 51-101**, as added by 1984, ch. 259, § 2, p. 620.]

51-102. Definitions. [**I.C., § 51-102**, as added by 1984, ch. 259, § 2, p. 620.]

51-103. Power of appointment — Term — Reappointment. [**I.C., § 51-103**, as added by 1984, ch. 259, § 2, p. 620.]

51-103A. Change of name or address — Fee. [**I.C., § 51-103A**, as added by 1980, ch. 157, § 2, p. 332, was repealed by S.L. 1984, ch. 259, § 1.]

51-104. Qualification for appointment. [**I.C., § 51-104**, as added by 1984, ch. 259, § 2, p. 620; am. 1992, ch. 234, § 1, p. 700.]

51-105. Appointment procedure — Oath. [**I.C., § 51-105**, as added by 1984, ch. 259, § 2, p. 620; am. 1992, ch. 234, § 2, p. 700; am. 1994, ch. 145, § 1, p. 324; am. 2015, ch. 244, § 32, p. 1008.]

51-106. Seal. [**I.C., § 51-106**, as added by 1984, ch. 259, § 2, p. 620; am. 1998, ch. 146, § 1, p. 516.]

51-107. Powers and jurisdiction. [**I.C., § 51-107**, as added by 1984, ch. 259, § 2, p. 620; am. 2007, ch. 312, § 1, p. 880.]

51-108. Disqualifying interests. [I.C., § 51-108, as added by 1984, ch. 259, § 2, p. 620.]

51-109. Forms for notarial acts. [I.C., § 51-109, as added by 1984, ch. 259, § 2, p. 620; am. 2002, ch. 32, § 24, p. 46; am. 2007, ch. 312, § 2, p. 880.]

51-110. Notary fee. [I.C., § 51-110, as added by 1984, ch. 259, § 2, p. 620.]

51-111. Duties. [I.C., § 51-111, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 1, p. 708.]

51-112. Official misconduct. [I.C., § 51-112, as added by 1984, ch. 259, § 2, p. 620; am. 1994, ch. 145, § 2, p. 324.]

51-113. Grounds for removal. [I.C., § 51-113, as added by 1984, ch. 259, § 2, p. 620; am. 1994, ch. 145, § 3, p. 324; am. 2015, ch. 244, § 33, p. 1008.]

51-114. Removal procedure. [I.C., § 51-114, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 2, p. 708; am. 1992, ch. 234, § 3, p. 700; am. 1994, ch. 145, § 4, p. 324; am. 2015, ch. 244, § 34, p. 1008.]

51-115. Resignation or death. [I.C., § 51-115, as added by 1984, ch. 259, § 2, p. 620.]

51-116. Cancellation procedure. [I.C., § 51-116, as added by 1984, ch. 259, § 2, p. 620.]

51-117. Conditions impairing validity of notarial act. [I.C., § 51-117, as added by 1984, ch. 259, § 2, p. 620.]

51-118. Civil liability of notary public and employer. [I.C., § 51-118, as added by 1984, ch. 259, § 2, p. 620.]

51-119. Criminal penalties. [I.C., § 51-119, as added by 1984, ch. 259, § 2, p. 620.]

51-120. Notary handbook. [I.C., § 51-120, as added by 1984, ch. 259, § 2, p. 620.]

51-121. Filing fees. [I.C., § 51-121, as added by 1984, ch. 259, § 2, p. 620; am. 1985, ch. 255, § 3, p. 708.]

51-122. Severability. [I.C., § 51-122, as added by 1984, ch. 259, § 2, p. 620.

51-123. Transition. [I.C., § 51-123, as added by 1984, ch. 259, § 2, p. 620, was repealed by S.L. 2011, ch. 151, § 25, effective July 1, 2011.]

Another former §§ 51-101 to 51-112 were repealed by S.L. 1984, ch. 259, § 1, effective January 1, 1985:

51-101. (1867, p. 47, § 1; 1873, p. 59, § 1; R.S., § 285; reen. R.C., § 231; am. 1915, ch. 45, § 1, p. 131; reen. C.L., § 231; C.S., § 208; I.C.A., § 50-101; am. 1974, ch. 5, § 2, p. 23).

51-102. (1867, p. 47, § 2; 1868, p. 99, § 1; R.S., § 286; am. R.C., § 232; am. 1915, ch. 45, § 2, p. 131; reen. C.L., § 232; C.S., § 209; I.C.A., § 50-102; am. 1980, ch. 157, § 1, p. 332).

51-103. (1867, p. 47, § 3; 1868, p. 99, § 2; R.S., § 287; am. R.C., § 233; reen. C.L., § 233; C.S., § 210; am. 1921, ch. 225, § 1, p. 513; I.C.A., § 50-103; am. 1949, ch. 283, § 3, p. 582).

51-103A. (I.C., § 51-103A, as added by 1980, ch. 157, § 2, p. 332).

51-104. (1867, p. 47, §§ 4-11; R.S., § 289; am. R.C., § 236; am. 1915, ch. 45, § 3, p. 131; am. C.L., § 236; C.S., § 211; I.C.A., § 50-104; am. 1979, ch. 203, § 1, p. 584).

51-105. (1867, p. 47, § 12; R.S., § 290; reen. R.C. & C.L., § 237; C.S., § 212; I.C.A., § 50-105).

51-106. (1867, p. 47, § 14; R.S., § 291; reen. R.C., § 238; am. 1915, ch. 45, § 4, p. 131; reen. C.L., § 238; C.S., § 213; I.C.A., § 50-106).

51-107. (1867, p. 47, § 16; R.S., § 292; reen. R.C. & C.L., § 239; C.S., § 214; I.C.A., § 50-107).

51-108. (R.S., § 293; am. 1907, p. 156, § 1; reen. R.C. & C.L., § 240; C.S., § 215; I.C.A., § 50-108).

51-109. (R.S., § 294; am. R.C., § 241; reen. C.L., § 241; C.S., § 216; I.C.A., § 50-109).

51-110. (1867, p. 47, § 13; R.S., § 295; reen. R.C. & C.L., § 242; C.S., § 217; I.C.A., § 50-110).

51-111. (1915, ch. 45, § 6, p. 131; compiled and reen. C.L., § 242a; C.S., § 218; I.C.A., § 50-111).

51-112. (1921, ch. 163, § 1, p. 360; I.C.A., § 50-112; am. 1945, ch. 68, p. 86; am. 1969, ch. 148, § 1, p. 473).

Former §§ 51-106, 51-109 and 51-111 were previously repealed by S.L. 1980, ch. 157, § 3.

### **Amendments.**

The 2019 amendment, by ch. 160, added “(2018)” at the end of the section.

### **Effective Dates.**

Section 7 of S.L. 2019, ch. 160 provided that the act should take effect on and after January 1, 2020.

## **COMMENT TO OFFICIAL TEXT**

This Act is a revision of the Uniform Law on Notarial Acts as approved by the National Conference of Commissioners on Uniform State Laws in 1982.

It provides for the recognition of notarial acts performed in this state, in other states, under the authority of a federally recognized Indian tribe, under federal authority, and in foreign jurisdictions. It applies to notarial acts whether performed with respect to tangible or electronic records.

**§ 51-102. Definitions.** — As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(3) “Electronic signature” means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) “In a representative capacity” means acting as:

(a) An authorized officer, agent, partner, trustee or other representative for a person that is not an individual;

(b) A public officer, personal representative, guardian or other representative, in the capacity stated in a record;

(c) An agent or attorney in fact for a principal; or

(d) An authorized representative of another in any other capacity.

(5) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(6) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

(7) “Notary public” means an individual commissioned to perform a notarial act by the secretary of state.

(8) “Official stamp” means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.

(9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal entity.

(10) “Personal appearance” or “appear personally” means the notarial officer is physically close enough to see, hear, communicate with and receive identification documents from the individual seeking notarization and any required witness.

(11) “Record” means information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “Sign” means, with present intent to authenticate or adopt a record by:

- (a) Executing or adopting a tangible symbol; or
- (b) Attaching to or logically associating with the record an electronic symbol, sound or process.

(13) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(14) “Stamping device” means:

- (a) A physical device capable of affixing to a tangible record an official stamp; or
- (b) An electronic device or process capable of attaching or logically associating an official stamp with an electronic record.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.



## History.

I.C., § 51-102, as added by 2017, ch. 192, § 3, p. 440.

## STATUTORY NOTES

### Cross References.

Secretary of state, § 67-901 et seq.

### Prior Laws.

Former § 51-102 was repealed. See Prior Laws, § 51-101.

## COMMENT TO OFFICIAL TEXT

**“Acknowledgment.”** An acknowledgment is a common form of notarial act in which an individual declares before a notarial officer that the individual has executed or signed the record for the purpose or purposes stated in the record. The declaration is made in the presence of the notarial officer. See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 608 (Nev. 2010).

It is a common practice for the acknowledging individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the notarial officer is not necessary as long as the individual declares, while in the presence of the officer at that time the acknowledgment is made, that the signature already on the record is, in fact, the signature of the individual.

If the record is signed by an individual in a representative capacity, the individual also declares to the notarial officer that the individual has proper authority to execute the record on behalf of the principal (see Section 2(4)).

**“Electronic.”** The adjective “electronic” is used to refer to electrical, digital, magnetic, wireless, optical, electromagnetic, and similar technologies. Electronic technologies are capable of generating, transmitting, or storing information in an intangible format that may subsequently be retrieved and viewed in a perceivable format.

As with the Uniform Electronic Transactions Act, the term “electronic” is descriptive and its reach is not intended to be limited to technologies that

are technically or purely electronic in nature (see UETA § 2, Comment 4). Rather, it is intended to be a collective term and applies to all “similar” technologies that involve the generation, transmittal, or storage of information in an intangible format.

Electromagnetic technologies that generate, transmit, and store information in intangible formats are electronic in nature. Thus, for example, the typical computer hard drive is a device that stores information electronically. Optical technologies that generate, transmit, or store information in intangible formats are also included within the meaning of the term. Although some aspects of optical technologies may not be truly electronic in nature, they are considered to be electronic because they create or manipulate information in an intangible format. Thus, for example, fiber optic cable is a means of transmitting information electronically.

The listing of specific technologies in this section is not intended to be static or limited to those created or in use at the time of the adoption of this Act. As electronic technologies continue to develop and evolve, even if they involve competencies other than those listed, they are also included in this definition if they perform the function of generating, transmitting, or storing information in an intangible format from which the information may subsequently be retrieved and viewed in a perceivable format.

The term “electronic” in this Act has the same meaning as it has in UETA § 2(5), ESign § 106(2), and URP ERA § 2(2).

**“Electronic signature.”** An electronic signature is any electronic symbol, sound, or process that is attached to, or logically associated with, an electronic record by an individual with the intent to sign the record. An electronic signature on an electronic record is one that accomplishes the same purpose as a traditional “wet” or pen and ink signature on a tangible record; it associates an individual with an electronic record for the purpose of signing or executing the record. The technology that may be used for an electronic signature includes all the technologies that are encompassed within the definition of the term “electronic.” Whether an individual in fact attaches an electronic signature to an electronic record with the intent to sign it is a question of fact to be determined in each case.

The term is similar to the definition used in UETA § 2(8), ESign § 106(5), and URP ERA § 2(4).

**“In a representative capacity.”** The term “in a representative capacity” refers to the role in which an individual signs a record or makes a statement with respect to which a notarial act is performed. Specifically, it indicates that the individual who signs a record or makes the statement is doing so as a representative of another person, a principal, and not on the individual’s own behalf. A representative with proper authority binds the principal as if the principal signed the record. The authority to perform an act in a representative capacity may be derived from the position the individual holds (e.g. corporate officer) or from a specific grant of authority to the individual (e.g. attorney in fact). Whether a person is authorized to act in a representative capacity is a fact to be determined under the agency law of the state.

In this Act, the term is used Section 2(1) and in the short form acknowledgment provided in Section 16(2).

**“Notarial act.”** The term “notarial act” encompasses a notarial act whether authorized in this Act or by other law of this state (see also Section 4(a)). This subsection lists those notarial acts specifically authorized by this Act. The listed notarial acts include taking an acknowledgment, administering an oath or affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.

This Act applies to a notarial act regardless of whether it is performed with respect to a tangible record, such as paper, or with respect to an electronic record. Other Uniform Laws, including UETA, ESign, and URPRA, specifically authorize the creation, transfer, storage, and recording of electronic records just as other law has traditionally authorized records on tangible media. This Act specifically authorizes notarial acts to be performed with respect to electronic records.

**“Notarial officer.”** The term “notarial officer” includes a notary public as well as other individual having the authority to perform notarial acts under other state, tribal, or federal law or the law of a foreign state. Thus, for example, judges, clerks, and deputy clerks are notarial officers (see Sections 10(a)(2), 11(a)(2), 12(a)(2) and 13(a)(1)). Similarly, in some states, attorneys at law, by the fact that they are attorneys at law, are also notarial officers (see Section 10(a)(3)). Also, an individual designated as a

notarizing officer by the United States Department of State for performing notarial acts overseas is also a notarial officer for that purpose (see Section 13(a)(3)). Other persons, whether by state law, federal law, tribal law, or the law of a foreign state, may also be notarial officers (see generally Sections 10 through 14.)

Many of the provisions of this Act apply broadly to all notarial officers regardless of the source of their authority. However, some provisions, such as those in Sections 17 through 25, apply only to notaries public.

**“Notary public.”** A “notary public” is an individual who is issued a commission as a notary public by the commissioning officer or agency of a state pursuant to Sections 21 through 23. A notary public does not include those individuals, such as judges and clerks of court, who are authorized to perform notarial acts under other law or as a part of the official duties of an office or position they hold.

**“Official stamp.”** The term “official stamp” refers to an image containing specified information that a notarial officer attaches to or associates with a certificate of notarial act, which is itself on, attached to, or associated with a record. The contents and characteristics of the “official stamp” are set forth in Section 17(a).

On a tangible record, the image is a physical one appropriately located on, or attached to, the certificate of notarial act. It may be applied to the surface of the certificate, as with a rubber stamp and ink, or it may be applied by compression or embossment, as with a seal. On an electronic record, the image is in an electronic format and attached to, or logically associated with, the electronic certificate of notarial act. Being an electronic image, the image must be viewed through a device such as a computer monitor or printed out in order to be humanly perceivable.

An “official stamp” is to be distinguished from the device by which the image is affixed on, attached to, or associated with a certificate of notarial act; that device is identified as a “stamping device” and is defined in Section 2(13).

**“Person.”** The word “person” is broadly defined to include all persons, whether human individuals or corporate, associational, or governmental entities. When the definition of a “person” is intended to be limited to a

human entity, the word “individual” is used in this Act rather than the word “person.” The definition of “person” is the standard definition for that term as used in other acts promulgated by the National Conference of Commissioners on Uniform State Laws.

**“Record.”** A “record” consists of information stored on a medium, whether the medium be a tangible one or an electronic one. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing, or other similar means. The information is humanly perceivable by reading it directly from the paper on which it is inscribed.

An electronic medium is one on which information is stored electronically. The information is humanly perceivable only by means of a device that interprets the electronic information in the record and makes it readable. For example, electronic information may be stored on a hard disk and it may be retrieved and read in a humanly perceivable form on a computer monitor or a paper printout.

Traditionally, especially if the tangible medium is paper, a record has been referred to as a “document.” In this Act, the word “record” replaces the word “document” and includes information regardless of whether the medium is tangible or electronic. The definition of the word “record” in this Act is the same as the definition of that word in UETA § 2(13) and ESign § 106(9). It also is the same as the definition of the word “document” as used in URPERA § 2(1).

**“Sign” and “Signature.”** Subsections (11) and (12) of this Act define the related words “sign” and “signature.” An individual may “sign” his or her name to a record either on a tangible medium or an electronic medium as long as the individual has the present intent to authenticate or adopt the record so signed. The verb “sign” includes other forms of the verb, such as “signing.” Except as provided in Section 9, an individual must personally perform the act of signing a record.

A symbol located on, or associated with, a tangible or electronic record that is the result of the signing process is an individual’s “signature.” The usual symbol an individual uses as the individual’s signature is the individual’s given name. If, instead of using the individual’s given name, however, an individual uses an alternative symbol as the individual’s

signature, such as an “X,” the individual may affix that symbol to the record as the individual’s signature.

Nothing in the definitions of the words “sign” or “signature” or of the word “record” (prior subsection) imposes a security process or standard in the definition of those words. When a means of security is imposed, it is done by a requirement in a separate section (see, for example, Section 20).

**“Stamping device.”** A “stamping device” is the means by which an official stamp is affixed to, embossed on, or associated with, the certificate of notarial act in a record. With a traditional paper medium, for example, the stamping device may be a rubber device that uses ink to impose a stamp on the paper. It may also be a device that compresses or embosses the paper and applies an impression seal.

In an electronic format, the stamping device is an electronic process or technology that associates unique information identifying the notarial officer with the certificate of notarial act that is affixed to, or associated with, an electronic record. The means of identifying the notarial officer may, for example, be a security card, password, encryption device, or other system that allows access to an electronic process that associates the officer’s unique information with the certificate of notarial act on an electronic record. The electronic process may be located on, for example, a desktop or laptop computer; a flash drive or other peripheral device used in connection with a computer; a portable electronic device such as a Blackberry or iPhone; or a secure website on the Internet. The means of identifying the notarial officer and the electronic process are collectively the stamping device. The result, although attached to, or associated with, an electronic certificate of notarial act, will be perceivable only by means of a device such as a computer monitor that is capable of presenting it in a perceivable format.

**“State.”** The word “state” includes any state of the United States, the District of Columbia, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. This definition is the standard definition for that word as used in other acts adopted by the National Conference of Commissioners on Uniform State Laws.

**“Verification upon [on] oath or affirmation.”** A “verification upon oath or affirmation” is a common form of notarial act. It is a declaration by an individual before a notarial officer in which the individual states on oath or affirmation that the declaration is true. This declaration is sometimes referred to as an “affidavit” or “jurat.” See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 608 (Nev. 2010).

**§ 51-103. Applicability.** — This chapter applies to a notarial act performed on or after the effective date of this act.

**History.**

I.C., § 51-103, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-103 was repealed. See Prior Laws, § 51-101.

**Compiler's Notes.**

The phrase “the effective date of this act” refers to the effective date of S.L. 2017, chapter 192, which was effective on July 1, 2017.

**COMMENT TO OFFICIAL TEXT**

This Act is not intended to be retroactive in effect. It applies to notarial acts performed on or after its effective date. The validity and effect of a notarial act performed prior to the effective date of this Act is determined by the law in effect at the time of its performance. (See also Section 28 regarding application of the Act to a notary public commission in effect on the effective date of the Act.)



**§ 51-104. Authority to perform notarial act.** — (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notary public may not perform a notarial act with respect to a record to which the notary public or the notary public's spouse is a party, or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

**History.**

I.C., § 51-104, as added by 2017, ch. 192, § 3, p. 440; am. 2019, ch. 160, § 3, p. 521.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-104 was repealed. See Prior Laws, § 51-101.

**Amendments.**

The 2019 amendment, by ch. 160, added subsection (3).

**Effective Dates.**

Section 7 of S.L. 2019, ch. 160 provided that the act should take effect on and after January 1, 2020.

**CASE NOTES**

Decisions Under Prior Law

Legislative intent.

Signing blank certificate.

Taking of acknowledgment.

**Legislative Intent.**

The manifest intent of the legislature in former similar law requiring a notary public to execute a certificate of acknowledgment is to provide protection against the recording of false instruments; the sine qua non of this statutory requirement is the involvement of the notary, a public officer in a position of public trust. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Signing Blank Certificate.**

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Taking of Acknowledgment.**

In taking acknowledgments, a notary properly discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness, that the acknowledgers are who they say they are and did what they say they did. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

## **COMMENT TO OFFICIAL TEXT**

Subsection (a) is the enabling provision of this Act and grants a notarial officer the authority to perform notarial acts. It authorizes a notarial officer to perform notarial acts that are authorized by this Act as well as those authorized by other law of this State.

When taken in conjunction with the definition of a notarial act in Section 2(5), subsection (a) also authorizes a notarial officer to perform notarial acts regardless of the format of the record. Thus, a notarial officer may perform notarial acts on tangible records as well as electronic records. However, before a notary public may begin to perform notarial acts on electronic records, the notary must notify the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records (see Section 20(b)).

Subsection (b) prohibits a notarial officer from performing a notarial act in a circumstance in which performance of that act might create a conflict of interest. It provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner, as defined by state law) is a party. The prohibition is absolute and clear; there is no need to demonstrate a direct beneficial interest even though the interest may be obvious. For example, a notarial officer may not take an acknowledgment of a deed in which the officer or the officer's spouse is a grantor or grantee.

In addition, subsection (b) provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner) has a direct beneficial interest. This prohibition depends on whether there is a direct beneficial interest derived from the record (see, *e.g.* *Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992)). For example, a deed by a third party (perhaps a grandparent) creating a trust in which a child of the notarial officer is a beneficiary might involve a direct beneficial interest to the notarial officer that is derived from the trust document (record), especially if the trust relieves support obligations of the officer. If it does provide a direct beneficial interest derived from the record, the officer would be prohibited from taking the acknowledgment of the deed of trust. While further information would be necessary to determine whether there is a direct beneficial interest derived from the record, a notarial officer should avoid performing a notarial act in any situation when doing so would raise the appearance of an impropriety.

This prohibition does not, however, extend to situations in which the beneficial interest is indirect and not the result of the operation of the record or transaction itself. For example, if the interest received is merely the payment of a notarial fee, the benefit is indirect and derived from the performance of notarial duties and not the result of the operation of the record or transaction itself (see, *e.g.* *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003)). Similarly, a notary public who is hired by an employer to be available to perform notarial acts on multiple transactions does not derive a beneficial interest as a result of the operation of the records or transactions themselves. For example, a notary public may be an employee and the expenses of obtaining and maintaining the commission may be paid by the notary's employer. The obvious purpose of such an arrangement, at

least in part, is that the notary public will perform notarial acts in appropriate situations as needed and requested by the employer. The fact that the notary public's salary and expenses are paid by the employer does not prevent the notary public from performing notarial acts when requested by the employer. Even though the notary receives a salary and the notary's salary may even depend on the fact that the notary performs notarial acts for the employer generally, the notary does not have a direct beneficial interest in the transactions or one that is derived from the operation of the records or transactions.

Likewise, if a notarial officer is an attorney, the attorney/notarial officer may perform notarial acts for a client as long as the attorney does not receive a direct beneficial interest as a result of operation of the record or transaction with regard to which the notarial act is performed. The fact that the attorney receives a fee for performing legal services, presently or in the future, is not a direct beneficial interest resulting from the operation of the record or transaction. Thus, receiving a fee for drafting a will or for subsequently representing the estate are fees for legal services and not a direct beneficial interest received as a result of the operation of the will (record) itself.

If a notarial officer should perform a notarial act in violation of subsection (b), the notarial act is not void per se. It may, however, be voidable in an action brought by a party who is adversely affected by the officer's misdeed. See *Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992), where the court stated that the document was not void per se but was voidable; in making a determination the court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. But see *Estate of McKusick*, 629 A.2d 41 (Me. 1993) in which the court questioned the validity of a will because the affidavit of a witness was made before a notary public who was the spouse of the witness.

**§ 51-105. Requirements for certain notarial acts.** — (1) A notary public who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notary public who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(3) A notary public who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notary public and signing the record has the identity claimed.

(4) A notary public who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(5) A notary public who makes or notes a protest of a negotiable instrument shall determine the matters set forth in [section 28-3-505\(2\), Idaho Code](#).

### **History.**

[I.C., § 51-105](#), as added by 2017, ch. 192, § 3, p. 440.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 51-105 was repealed. See Prior Laws, § 51-101.

## **CASE NOTES**

Duty of officer.

Identification of person acknowledging instrument.

Not part of execution.

Personal appearance required.

Question for court.

Substantial compliance.

### **Duty of Officer.**

Officer taking acknowledgment is not required to see person sign the instrument, nor to witness the instrument, but is required to ascertain whether or not the party acknowledges the instrument as his or her obligation or contract, and as having been executed by him or her. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

### **Identification of Person Acknowledging Instrument.**

When an officer taking an acknowledgment does not himself know that the person who appears before him is actually the same person whose name is subscribed to the instrument, such officer is authorized, by statute, to accept either the oath or affirmation of a credible witness. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

In taking acknowledgments, a notary properly discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness, that the acknowledgers are who they say they are and did what they say they did. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Not Part of Execution.**

An acknowledgment does not form a part of the execution of an instrument. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

### **Personal Appearance Required.**

Person acknowledging execution of instrument must be personally present before officer; an acknowledgment over telephone is insufficient. *Myers v. Eby*, 33 Idaho 266, 193 P. 77 (1920).

Where neither husband nor wife, who had executed a purported oil and gas lease, contemplating the leasing of community property for a term of years, personally appeared before a notary public, the notary could not take their acknowledgment of the lease by accepting or acting upon an affidavit of a third party, stating that the third party personally knew the husband and wife, and was present and saw them execute the lease. [Little v. Bergdahl Oil Co.](#), 60 Idaho 662, 95 P.2d 833 (1939).

An officer authorized to take acknowledgments cannot, in the absence of the person who signed the instrument, accept the affidavit of a witness to the signature and, upon such affidavit alone, take the acknowledgment. [Little v. Bergdahl Oil Co.](#), 60 Idaho 662, 95 P.2d 833 (1939).

### **Question for Court.**

Where defendants in quiet title suit attached a copy of a purported oil and gas lease, executed by plaintiffs, covering land in question, to their answer and annexed the affidavit of a third party respecting execution and acknowledgment of lease, plaintiffs' general demurrer to the answer admitted facts shown by the affidavit and submitted to trial court the question as to whether there was a valid acknowledgment of purported lease. [Little v. Bergdahl Oil Co.](#), 60 Idaho 662, 95 P.2d 833 (1939).

### **Substantial Compliance.**

A substantial compliance with the statutory form of acknowledgment will suffice, and technicalities will be disregarded. [Pacific Coast Joint Stock Land Bank v. Security Prods. Co.](#), 56 Idaho 436, 55 P.2d 716 (1936).

Where an acknowledgment of a mortgage before a Utah notary public was made on a printed form prepared for use in Idaho, from which the word "Idaho" was stricken out and the word "Utah" substituted in two places, a clerical error in failing to strike the word "Idaho" from the recitation that the notary was such in and for the state of "Idaho" does not vitiate the certificate of acknowledgment. [Pacific Coast Joint Stock Land Bank v. Security Prods. Co.](#), 56 Idaho 436, 55 P.2d 716 (1936).

Acknowledgment of a mortgagor that he signed and sealed the mortgage as his free and voluntary act and deed for the uses and purposes therein mentioned is a sufficient compliance with the statutory requirement of



acknowledgment of the execution of a mortgage. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

A certificate of acknowledgment complete and regular on its face raises a presumption in favor of the truth of every fact recited therein, which the uncorroborated testimony of the party acknowledging the instrument is insufficient to overcome, and the additional affidavit of the notary that he could not recall any of the circumstances surrounding the execution and acknowledgment of an instrument, although it had sometimes been his practice to take an acknowledgment in the absence of the signing party, was insufficient to impeach the validity of the acknowledgment. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

Strict compliance with the statutory form is not required; substantial compliance with the statutory requirements is sufficient. Thus, where the certificate did not contain the words “known or identified to me (or proved to me on the oath of \_\_\_\_), to be the person whose name is subscribed to the within instrument,” but where the record disclosed that the notary did in fact know that the persons who executed the certificate of acknowledgment were the same persons who executed the written instrument, the acknowledgment substantially complied with the statutory requirements and forms. *Benjamin Franklin Sav. & Loan Ass’n v. New Concept Realty & Dev., Inc.*, 107 Idaho 711, 692 P.2d 355 (1984).

## COMMENT TO OFFICIAL TEXT

**“Acknowledgment”** — Subsection (a) provides that when taking an acknowledgment, a notarial officer certifies that: (1) the individual who is appearing before the officer and acknowledging the record has the identity claimed, and (2) the signature on the record is the signature of the individual appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7). The acknowledging individual must also declare, as required in Section 2(1), that the individual in signing the record for the purpose stated in the record.

It is common practice for the individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the officer is not required as long as the individual acknowledges to the



officer, when the individual appears before the officer, that the signature already on the record is that of the individual.

**“Verification on oath or affirmation”** — Subsection (b) provides that when taking a verification on oath or affirmation, a notarial officer certifies that: (1) the individual who is appearing before the officer and making the verification has the identity claimed, and (2) that the signature on the record is the signature of the individual appearing before the officer. The verifying individual must also declare, as required in Section 2(14), that the statements in the record are true. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7). A verification may be referred to as an affidavit or a jurat in some jurisdictions.

**“Witnessing or attesting a signature”** — Subsection (c) provides that when witnessing or attesting a signature, a notarial officer certifies that: (1) the individual who is appearing before the officer and signing the record has the identity claimed, and (2) that the signature on the record is the signature of the individual appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7).

Witnessing or attesting a signature differs from taking an acknowledgment in that the record contains no declaration that it is signed for the purposes stated in the record and differs from a verification on oath or affirmation in that the individual is not verifying a statement in the record as being true. It is merely a witnessing of the signature of an identified individual.

**“Certifies or attests a copy”** — Subsection (d) provides that when certifying or attesting a copy of a record or item, a notarial officer certifies that: (1) the officer has compared the copy with the original record or item, and (2) has determined that the copy is a full, true, and accurate transcription or reproduction of the original record or item. This subsection directs the notarial officer to compare a record or item with a copy of the record or item. Therefore, the record or item must be presented to the

notarial officer along with the copy so that the officer is able to make the comparison.

Certifying or attesting of a copy is usually done if it is necessary to produce a copy of a record when the original is in an archive or other collection of records and the archived record cannot be removed. In many cases, however, the custodian of the official archive or collection may also be empowered to issue an officially certified copy. When a copy officially certified by the custodian of the archive is available, it is official evidence of the state of the public archive or collection, and it may be better evidence of the original record than a copy certified by a notarial officer.

**“Make or note a protest of a negotiable instrument”** — Subsection (e) provides that a notarial officer may make or note a protest of a negotiable instrument under [UCC § 3-505\(b\)](#). A protest is an official certificate of dishonor of a negotiable instrument. [UCC § 3-505\(b\)](#) confers the authority to make or take a protest on “a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs.” In the United States a protest of a negotiable instrument may not be needed as evidence of dishonor (see [UCC § 3-505\(a\)](#); see also [UCC § 3-503](#)). A protest may be necessary, however, on international drafts governed by law of a foreign state (see [UCC § 3-505](#), Official Comment). This subsection is designed to insure that there is no doubt as to the authority of a notary public to make or note a protest of a negotiable instrument when appropriate under the Uniform Commercial Code.

**§ 51-106. Personal appearance required.** — If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notary public.

**History.**

I.C., § 51-106, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-106 was repealed. See Prior Laws, § 51-101.

**COMMENT TO OFFICIAL TEXT**

This section expressly requires that when an individual is making a statement or executing a record with regard to which a notarial act will be performed by a notarial officer, the individual must appear before the officer to make the statement or execute the record. Thus, an individual who is acknowledging a record or verifying a statement on oath or affirmation before a notarial officer, or an individual whose signature is being witnessed or attested by a notarial officer, must appear before the officer to perform the specified function. See *Vancura v. Katris*, 907 N.E.2d 814, 391 Ill. App. 3d 350 (2009) which involved a notary public who performed notarial acts without the individual signing the instrument personally appearing before the notary.

To provide assurance to persons relying on the system of notarial acts authorized by this Act, notarial officers must take reasonable steps to assure the integrity of the system. It is by personal appearance before the notarial officer that the individual making a statement or executing a record may be properly identified by the notarial officer (see Section 7). It is also by personal appearance before the notarial officer that the officer may be satisfied that (1) the individual is competent and has the capacity to execute

the record, and (2) the individual's signature is knowingly and voluntarily made (see Section 8(a)).

Personal appearance does not include an "appearance" by video technology, even if the video is "live" or synchronous. Nor does it include an "appearance" by audio technology, such as a telephone. At the time that this act is being drafted, those methods of "appearance" do not provide sufficient opportunity for the notarial officer to identify the individual fully and properly; nor do they allow the officer sufficient opportunity to evaluate whether the individual has the competency or capacity to execute the record or whether the record is knowingly and voluntarily made.

**§ 51-107. Identification of individual.** — (1) A notary public has personal knowledge of the identity of an individual appearing before the notary public if the individual is personally known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notary public has satisfactory evidence of the identity of an individual appearing before the notary public if the notary public can identify the individual:

(a) By means of:

(i) A passport, driver's license or government-issued nondriver identification card that is current or expired not more than three (3) years before performance of the notarial act; or

(ii) Another form of government identification issued to an individual that is current or expired not more than three (3) years before performance of the notarial act, that contains the signature or a photograph of the individual, and that is satisfactory to the notary public; or

(b) By a verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of a passport, driver's license or government-issued nondriver identification card that is current or expired not more than three (3) years before performance of the notarial act.

(3) A notary public may require an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

### **History.**

I.C., § 51-107, as added by 2017, ch. 192, § 3, p. 440.

### **STATUTORY NOTES**

## **Prior Laws.**

Former § 51-107 was repealed. See Prior Laws, § 51-101.

## **CASE NOTES**

Identification by witness.

Personal appearance required.

### **Identification by Witness.**

When an officer taking an acknowledgment does not himself know that the person who appears before him is actually the same person whose name is subscribed to the instrument, such officer is authorized, by statute, to accept either the oath or affirmation of a credible witness. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

### **Personal Appearance Required.**

An officer authorized to take acknowledgments cannot, in the absence of identical person who signed the instrument, accept the affidavit of a witness to the signature, and, upon such affidavit alone, take the acknowledgment. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

## **COMMENT TO OFFICIAL TEXT**

Section 5, above, requires a notarial officer to determine, either from personal knowledge or satisfactory evidence, that the individual for whom the officer will perform a notarial act has the identity claimed. Section 7 specifies the means by which the notarial officer is to determine that identity. Subsection 7(a) describes when a notarial officer has personal knowledge of an individual's identity. Subsection 7(b) describes when a notarial officer has satisfactory evidence of an individual's identity.

Subsection (a) states that the notarial officer has personal knowledge of the identity of an individual only if the officer personally knows the individual through prior dealings. The prior dealings may be business dealings or personal dealings. Business dealings might simply be the performance of prior notarial acts for the individual. They may also arise because the notarial officer engaged in prior business transactions with the individual. Personal dealings may exist because the notarial officer is a

friend or colleague of the individual. The dealings may also be mixed in nature such as where the notarial officer and individual work in the same office, school, or building. Regardless of whether the prior dealings are business or personal, they must be sufficient to provide the notarial officer with information that is adequate to identify the individual without the need to view any identification credentials or require any other means of identification.

Subsection (b) describes two methods by which a notarial officer may obtain satisfactory evidence of the identity of the individual even though the officer has no prior dealings with that individual. One method of identification is based on an identification credential issued to the individual (subsection (b)(1)). The other method of identification is based on an oath or affirmation of a credible witness as to the identity of the individual (subsection (b)(2)).

Subsection (b)(1)(A) allows a notarial officer to identify an individual by means of a passport, driver's license, or government issued nondriver identification card. The passport may be issued by the United States or by a foreign state. A United States passport includes the traditional passport book and the more recent passport card as well as any other form of passport the United States may issue. A driver's license may be issued by a state government, the federal government, a government of a foreign state as defined in Section 14(a), or a tribal, pueblo, or similar authority. A government issued nondriver identification card is a card issued by many states to an individual, which may be used as a means of identification instead of a driver's license. It may be issued to an individual who is not qualified to obtain a driver's license or it may be issued in lieu of a driver's license to an individual who is qualified to obtain a driver's license.

Although the notarial officer might usually expect the identification credential to be currently in force, this provision recognizes that even though an expired credential would not be effective for its primary purpose (e.g. as a license permitting the individual to drive an automobile), it may be used for a period of up to [three years] after its expiration as a means for identifying an individual. As long as it provides the necessary information for identifying the individual, its identification function is satisfied. This subsection does, however, put a specific outside limit of [three years]

beyond the expiration of the credential for its use for identification purposes.

Subsection (b)(1)(B) recognizes that some individuals may not have a passport, driver's license, or even a government issued nondriver identification card that is currently valid or not expired by more than [three years]. This subsection allows the notarial officer to base the officer's identification of the individual on another form of government issued identification as long as that form of identification contains the individual's signature or a photograph of the individual as a means by which the individual can be associated with the credential. This form of credential may include, for example, a military identification. However, this subsection also makes it clear that this alternative form of identification must be satisfactory to the notarial officer. If the officer is not satisfied with the identification that the credential provides, the officer may refuse to accept it as sufficient identification.

Subsection (b)(2) recognizes that an individual may require the performance of a notarial act even though that individual is not known to a notarial officer and does not have one of the identification credentials listed in subsection (b)(1), or at least the individual does not have the identification credential currently available. This provision allows a notarial officer to identify an individual through an oath or affirmation of a credible witness personally appearing before the officer. The credible witness must either be (1) personally known to the officer, or (2) identified to the officer by means of the witness' passport, driver's license, or government issued nondriver identification as long as the credential has not expired more than [three years] before the performance of the notarial act. If the identity of an individual is verified by a properly identified credible witness, it is established by satisfactory evidence.

The meaning of the term "personally known" in subsection (b)(2) is the same as in subsection (a); the meanings of the terms "passport," "driver's license," and "government issued nondriver identification" in subsection (b)(2) are the same as in subsection (b)(1)(A). Subsection (b)(2) does not allow for the identification of the credible witness by means of an alternative form of identification as is provided in subsection (b)(1)(B) for the identification of the individual for whom the notarial act is performed. Subsection (b)(2) also does not allow the identity of a witness to be based on an oath or



affirmation of yet another witness; such a process could lead to a spiraling “witness to the witness.”

Subsection (c) recognizes that, even if a specified identification credential is presented, a notarial officer may, in some cases, be uncertain as to the identity of the individual. For example, the identification credential may be defaced or have defects that make legibility difficult, or there may be changes in the physical appearance of the individual that may not be reflected in the image on the identification credential. If the notarial officer is uncertain as to the identity of the individual (whether the individual for whom the notarial act is performed or a credible witness for that individual), the officer may require the individual to provide additional information or identification in order to assure the officer as to the identity of the individual.

Identification of an individual based on an identification credential requires some flexibility. For example, it is not uncommon that an individual’s name as used in a record may be a full name, including a full middle name; however, the name of the individual as provided on the identification credential may only use a middle initial or none at all. The inconsistency may be vice versa instead. The notarial officer should recognize these common inconsistencies when performing the identification of an individual. However, if a notarial officer is ultimately uncertain about the identity of the individual, the notarial officer should refuse to perform the notarial act (see Section 8.)

**§ 51-108. Authority to refuse to perform notarial act.** — (1) A notary public may refuse to perform a notarial act if the notary public is not satisfied that:

(a) The individual executing the record is competent or has the capacity to execute the record; or

(b) The individual's signature is knowingly and voluntarily made.

(2) A notary public may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

**History.**

I.C., § 51-108, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-108 was repealed. See Prior Laws, § 51-101.

**COMMENT TO OFFICIAL TEXT**

Subsection (a) allows the notarial officer to refuse to perform a requested notarial act in either of two circumstances. First, if the notarial officer is not satisfied as to the competency or capacity of the individual executing the record, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is not satisfied that the individual has the mental status needed to execute the record, the officer may refuse to perform the notarial act. Second, if the notarial officer has concern about whether the individual's signature was knowingly and voluntarily made, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is concerned that the individual's signature is coerced, the officer may refuse to perform the notarial act.

Satisfaction as to the competency or capacity of the individual making the record or with the fact that the signature is knowingly and voluntarily made are matters within the proper judgment of the notarial officer. No

expertise on the part of the notarial officer as to those matters is required to refuse to perform the notarial act.

This subsection does not impose a duty upon the notarial officer to make a determination as to the competency or capacity of the individual nor as to whether the signature of the individual is knowingly and voluntarily made. It does not require the officer to perform a formal evaluation of the individual on those matters. It merely permits the notarial officer to refuse to perform the notarial act if the officer should not be satisfied as to those matters.

Subsection (b) gives the notarial officer the general authority to refuse to perform a notarial act for any other reason as long as the reason for the refusal is itself not a violation of other law of this state or the United States. Thus, for example, a notary public may be an employee whose employer has paid the expenses of obtaining and maintaining the notary public commission. Their understanding may be that the notary public will be available to perform notarial acts as needed by the employer but will not be available to perform them for general members of the public. A notary public under that arrangement may refuse to perform notarial acts for members of the public. In another context, a notary public may refuse to perform a notarial act with respect to an electronic record if the client demands that the notary use a technology for performing the notarial act that the notary has not selected (see Section 20(a)).

The subsection does prohibit, however, the officer from refusing to perform the notarial if the refusal is a violation of other law. For example, the notarial officer may not refuse to perform the notarial act due to discrimination that is prohibited by state or federal law. Indeed, such a refusal to perform the notarial act may also be punishable under the state or federal law.

**§ 51-109. Signature if individual unable to sign.** — If an individual is physically unable to sign a record, the individual may direct an individual other than the notary public to sign the individual's name on the record. The notary public shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

**History.**

I.C., § 51-109, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-109 was repealed. See Prior Laws, § 51-101.

**COMMENT TO OFFICIAL TEXT**

This section recognizes that some individuals may not be personally able to sign a record because of a physical disability. If an individual is physically unable to sign the record, this section allows an alternate process.

This section allows a disabled individual, who is executing a record, to direct an individual other than the notarial officer to sign the executing individual's name to the record. It then requires the notarial officer to insert the quoted language in the record or to insert words of similar import. In effect, the executing individual is appointing another individual to act as the executing individual's agent for the purpose of signing the record.

**§ 51-110. Notarial act in this state.** — (1) A notarial act may be performed in this state by:

- (a) A notary public of this state; or
- (b) Any other individual authorized to perform the specific act by the law of this state.

(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notary public described in subsection (1) (a) or (b) of this section conclusively establish the authority of the officer to perform the notarial act.

**History.**

I.C., § 51-110, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-110 was repealed. See Prior Laws, § 51-101.

**COMMENT TO OFFICIAL TEXT**

Subsection (a) lists the individuals who are entitled to serve as notarial officers and perform notarial acts in this state. A notary public as well as a judge, clerk, or [deputy clerk] of any court of this state are specifically authorized to perform notarial acts

This Act provides two optional groups of authorized individuals. Under subsection (a)(3), a state may authorize a duly licensed attorney at law to serve as a notarial officer by virtue of that individual's status as a licensed attorney. The attorney's authority to perform notarial acts does not depend on the issuance of a notary public commission by the commissioning officer or agency. This subsection would not be relevant, however, if an attorney

must obtain a commission as a notary public from the commissioning officer or agency in order to perform notarial acts.

Subsection (a)(4) recognizes the authority of other individuals to perform notarial acts if the performance of notarial acts by that individual is otherwise authorized by state law. Usually, the individuals recognized in this subsection are incumbents in a particular office. For example, recorders or registrars of deeds, or commissioners of titles, may be authorized to perform notarial acts under separate legislation.

Subsections (b) and (c) deal with proof of the authority of a notarial officer to perform a notarial act. Establishing that proof usually involves three steps:

1. Proof that the signature in the certificate of notarial act is that of the individual identified as a notarial officer;
2. Proof that the individual named in the certificate of notarial act holds the designated office as a notarial officer; and
3. Proof that individuals holding the designated office may perform notarial acts.

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of a notarial act as listed above. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and [deputy clerks] of this state (and attorneys licensed to practice law in this state, if subsection (a)(3) is adopted) have the authority to perform notarial acts. Since this Act specifically authorizes individuals holding those offices to perform notarial acts, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This is the third step in the proof of a notarial act as listed above. However, this per se recognition does not extend beyond a notary public, judge, clerk or [deputy clerk] (or attorneys licensed to practice law

in this state, if subsection (a)(3) is adopted) of this state. Authority of other individuals to perform notarial acts must be proven by reference to other law of this state.

**§ 51-111. Notarial act in another state.** — (1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notary public of this state if the act performed in that state is performed by:

(a) A notary public of that state; (b) A judge, clerk or deputy clerk of a court of that state; or (c) Any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1) (a) or (b) of this section conclusively establish the authority of the officer to perform the notarial act.

#### **History.**

I.C., § 51-111, as added by 2017, ch. 192, § 3, p. 440.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 51-111 was repealed. See Prior Laws, § 51-101.

### **COMMENT TO OFFICIAL TEXT**

Subsection (a) lists the notarial officers of other states whose notarial acts, when performed in those states, will be recognized in this state. The officers listed in subsections (a)(1) and (2) are identical to the officers listed in Subsections 10(a)(1) and (2), above. It provides parity of recognition for notarial acts performed by those officers. Subsection (a)(3) recognizes notarial acts performed by other notarial officers of other states, when performed in those states, if they are authorized by law of the other state. It is parallel to the recognition of other notarial officers of this state as provided in subsection 10(a)(4) (and subsection 10(a)(3) if attorneys at law are authorized to perform notarial acts in the other state by reason of their



offices and not be reason of being issued commissions as notaries public). It clearly establishes that acknowledgements, verifications, affidavits, and other forms of notarial acts performed in another state by the listed notarial officers of that state meet the requirements of this section and are to be recognized in this state without the further need of a certification or authentication of the notarial officer by an official of the foreign state (see *Aspey v. Memorial Hospital*, 477 Mich. 120, 730 N.W.2d 695 (2007)).

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer of the other state on the certificate of notarial act is, in fact, the signature of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer of the other state in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and deputy clerks of the other state have the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This abolishes the need for a “clerk’s certificate,” certification, or similar instrument to prove the authority of a notary public, judge, clerk or deputy clerk to perform a notarial act (see *Aspey v. Memorial Hospital*, 477 Mich. 120, 730 N.W.2d 695 (2007)). This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a notary public, judge, clerk or deputy clerk of the other state. Authority of other individuals to perform notarial acts may be proven by reference to law of the other state. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s certificate” or certification are acceptable.

**§ 51-112. Notarial act under authority of federally recognized Indian tribe.** — (1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notary public of this state if the act performed in the jurisdiction of the tribe is performed by:

- (a) A notary public of the tribe; or
- (b) Any other individual authorized by the law of the tribe to perform the notarial act.

(2) The signature and title of an individual performing a notarial act under the authority and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1) (a) or (b) of this section conclusively establish the authority of the officer to perform the notarial act.

### **History.**

I.C., § 51-112, as added by 2017, ch. 192, § 3, p. 440.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 51-112 was repealed. See Prior Laws, § 51-101.

## **COMMENT TO OFFICIAL TEXT**

Subsection (a) lists the notarial officers acting under the authority and in the jurisdiction of a federally recognized Indian tribe (see [25 C.F.R. § 83.1 et. seq.](#); see also [25 U.S.C. § 9 \(2010\)](#)) whose notarial acts will be recognized in this state. The officers listed in subsections (a)(1) and (2) are identical to the officers listed in Subsections 10(a)(1) and (2), above. It provides parity of recognition for notarial acts performed by those officers. Subsection (a)(3) recognizes notarial acts performed by other notarial

officers acting under the authority and in the jurisdiction of a federally recognized Indian tribe, if they are authorized by the law of the Indian tribe. It is parallel to the recognition of other notarial officers of this state as provided in subsection 10(a)(4) (and subsection 10(a)(3) if attorneys at law are authorized to perform notarial acts under the authority of a federally recognized Indian tribe by reason of their offices and not be reason of being issued commissions as notaries public).

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer acting under the authority of an Indian tribe on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer acting under the authority of a federally recognized Indian tribe in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and deputy clerks acting under the authority of a federally recognized Indian tribe have the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This abolishes the need for a “clerk’s certificate,” certification, or similar instrument to prove the authority of a notary public, judge, clerk or deputy clerk to perform a notarial act. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a notary public, judge, clerk or deputy clerk acting under the authority of a federally recognized Indian tribe. Authority of other individuals to perform notarial acts may be proven by reference to law of the federally recognized Indian tribe. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s certificate” or certification are acceptable.

**§ 51-113. Notarial act under federal authority.** — (1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notary public of this state if the act performed under federal law is performed by:

- (a) A judge, clerk or deputy clerk of a court;
- (b) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (c) An individual designated as a notarizing officer by the United States department of state for performing notarial acts overseas; or
- (d) Any other individual authorized by federal law to perform the notarial act.

(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of an officer described in subsection (1)(a), (b) or (c) of this section conclusively establish the authority of the officer to perform the notarial act.

### **History.**

I.C., § 51-113, as added by 2017, ch. 192, § 3, p. 440.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 51-113 was repealed. See Prior Laws, § 51-101.

## **COMMENT TO OFFICIAL TEXT**

Some notarial acts are performed by notarial officers acting under federal authority or holding office under federal authority. This section recognizes the notarial acts performed by those officers when performed in accordance

with federal law. Subsection (a)(1) recognizes the notarial acts performed by judges, clerks, and deputy clerks under federal law. It is the federal law parallel to the notarial officers recognized in subsections 10(a)(2) and 11(a)(2).

Subsection (a)(2) recognizes the authority of certain individuals to perform notarial acts while in the military service or under the authority of a military service. These provisions are currently codified in [10 U.S.C § 1044a \(2010\)](#). At the time of the drafting of this Act, subsection (b) of the federal codification provides the following individuals with the authority to perform notarial acts for the purposes stated in subsection (a) of the enactment:

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

Subsection (a)(3) recognizes the authority of an individual who is designated as a notarizing officer by the United States Department of State for performing notarial acts overseas. This has been a traditional function performed by a notarizing officer of the Department of State. In many parts of the world a notarial act performed by a notarizing officer of the Department of State may be the best means to perform a notarial act for records that must be recognized in the United States. See subsection 14(f) as to the effect of a consular authentication performed by an individual who

is designated as a notarizing officer by the United States Department of State for performing notarial acts overseas.

Subsection (a)(4) provides recognition of the notarial acts performed by other notarial officers authorized under federal law who are not listed in the prior subsections. A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons (see [18 U.S.C. §4004 \(2010\)](#)).

Subsection (b) creates a prima facie presumption that the signature purported to be that of a notarial officer under federal law on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer in the certificate of notarial act does, in fact, hold the designated notarial office under federal law. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that a federal judge, clerk or deputy clerk, an individual in the military service or acting under the authority of a military service, and an individual designated as a notarizing officer by the Department of State has the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a federal judge, clerk or deputy clerk, an individual in the military service or acting under the authority of a military service, or an individual designated as a notarizing officer by the Department of State. Authority of other individuals to perform notarial acts under federal law may be proven by reference to federal law granting the authority.

**§ 51-114. Foreign notarial act.** — (1) As used in this section, “foreign state” means a government other than the United States, a state or a federally recognized Indian tribe.

(2) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notary public of this state.

(3) If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(4) The signature and official stamp of an individual holding an office described in subsection (3) of this section are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(5) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(6) A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

### **History.**

I.C., § 51-114, as added by 2017, ch. 192, § 3, p. 440.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 51-114 was repealed. See Prior Laws, § 51-101.

## **Compiler's Notes.**

For more information on the Hague Convention on October 5, 1961, see <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>.

### **COMMENT TO OFFICIAL TEXT**

Subsection (a) clarifies that, for purposes of this section, a “foreign state” means a foreign country and not the United States, a state in the United States federal system, or a federally recognized Indian tribe.

Subsection (b) provides for the recognition of notarial acts performed by notarial officers acting under the authority and in the jurisdiction of a foreign state or its constituent units. It also recognizes the notarial acts performed by notarial officers acting under the authority of a multinational or international governmental organization. An example of a multinational or international governmental organization is the United Nations.

Subsection (c) states that if the title of a notarial office and the authority of a person in that office to perform notarial acts appear in a digest of foreign laws or in a list customarily used as a source for that information, the authority of a notarial officer holding that office to perform the indicated notarial acts is conclusively established. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10.

Subsections (d) states that the signature and official stamp of a notarial officer identified in subsection (c) provides prima facie evidence that (1) the officer's signature is genuine, and (2) the officer holds an office with the designated title. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10.

Being only a prima facie evidence that the notarial officer's signature is valid and that the officer holds an office with the designated title, those elements may be disproved in a legal proceeding upon adequate proof. If the validity of a foreign notarial officer's signature or the fact that the officer holds an office with the designated title is challenged, ultimate proof in a judicial proceeding may be expensive and time consuming. Furthermore, the potential of post hoc challenges may be detrimental to the



promotion of international commerce. Therefore, the Act recognizes two means by which the validity of the notarial officer's signature and the certainty that the individual holds a notarial office with the designated title can be conclusively established: (1) "apostille," and (2) consular authentication.

Subsection (e) recognizes an "apostille" as one means of conclusively establishing those facts. The United States is a party to an international treaty regarding the authentication of notarial acts performed on public documents. The treaty is known as the Hague Convention ("Convention de La Haye du 5 octobre 1961"). Under this treaty, an "apostille" may be prepared by a competent authority in a foreign state in accordance with the treaty and stamped on or attached to the record. A competent authority is one designated by the foreign state from which the public document emanates. The "apostille" may be in the language of the foreign state in which it is issued, but the words "APOSTILLE (Convention de La Haye, du 5 octobre 1961)" are always in French. The "apostille" should conform as closely as possible to the Model annexed to the Convention.

Subsection (e) carries out the provisions of Hague Convention and gives effect to an "apostille" complying with the treaty. It states that the "apostille" conclusively establishes that: (1) the signature of the notarial officer on the certificate is genuine, and (2) the officer holds an office with the indicated title. When combined with the conclusive presumption established under subsection (c) as to the authority of a notarial officer with a designated title to perform a notarial act, all three steps in the proof of the authority of a notarial officer to perform a notarial act, as listed in the Comment to Section 10, are met.

The "apostille" has the following form, which is set forth in the annotation to Federal Rules of Civil Procedure Rule 44: The certificate will be in the form of a square with sides at least 9 centimetres long:  
APOSTILLE

(Convention de La Haye du 5 octobre 1961) 1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

Certified

5. at ..... 6. the .....

7. by .....

8. No .....

9. Seal/stamp: 10. Signature:

.....

Subsection (f) provides an alternative means by which (1) the fact that the signature of the notarial officer on the certificate is genuine, and (2) the fact that the officer held an office with the designated title may be assured. Under it, an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas may provide that assurance by means of a consular authentication. A consular authentication conclusively establishes that (1) the signature of the foreign notarial officer is valid, and (2) the officer holds the indicated office. The consular authentication must be attached to the record with respect to which the notarial act is performed. When combined with the conclusive presumption established under subsection (c) as to the authority of a notarial officer with a designated title to perform a notarial act, all three steps in the proof of the authority of a notarial officer to perform a notarial act, as listed in the Comment to Section 10, are met.

**§ 51-114A. Notarial act performed by remotely located individual. —**

(1) As used in this section:

(a) “Communication technology” means an electronic device or process that:

(i) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(ii) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(b) “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(c) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(e) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual may comply with the provisions of [section 51-106, Idaho Code](#), by appearing before a notary public by means of communication technology.

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(i) Has personal knowledge under [section 51-107\(1\), Idaho Code](#), of the identity of the individual;

(ii) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under [section 51-107\(2\), Idaho Code](#), or under this section; or

(iii) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two (2) different types of identity proofing.

(b) The notary public is able reasonably to confirm the record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(c) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(d) For a remotely located individual located outside the United States:

(i) The record:

1. Is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States; or

2. Involves property located in the territorial jurisdiction of the United States or a transaction substantially connected with the United States; and

(ii) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(4) If a notarial act is performed under this section, the certificate of notarial act required by [section 51-115, Idaho Code](#), and the short form certificate provided in [section 51-116, Idaho Code](#), must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in [section 51-116, Idaho Code](#), for a notarial act subject to this section is sufficient if it:

(a) Complies with rules adopted under subsection (8)(a) of this section;  
or

(b) Is in the form provided by [section 51-116, Idaho Code](#), and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(6) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public, shall retain the audio-visual recording created under subsection (3)(c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. The recording must be retained for at least ten (10) years after the recording is made or as otherwise required by rule adopted under subsection (8)(d) of this section.

(7) Before a notary public performs the notary public’s initial notarial act under this section, the notary public shall notify the secretary of state that the notary public will be performing notarial acts facilitated by communication technology and identify the technology. If the secretary of state has established standards for approval of communication technology or identity proofing under subsection (8) of this section and [section 51-127, Idaho Code](#), the communication technology and identity proofing must conform to the standards.

(8) In addition to adopting rules under [section 51-127, Idaho Code](#), the secretary of state shall adopt rules under this section regarding performance of a notarial act. The rules:

(a) Shall prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(b) Shall establish standards for communication technology and identity proofing;

(c) May establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(d) May establish standards and a period for the retention of an audio-visual recording created under subsection (3)(c) of this section.

(9) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual,

the secretary of state shall consider:

- (a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the national association of secretaries of state;
- (b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
- (c) The views of governmental officials and entities and other interested persons.

**History.**

I.C., § 51-114A, as added by 2019, ch. 160, § 4, p. 521.

**STATUTORY NOTES**

**Effective Dates.**

Section 7 of S.L. 2019, ch. 160 provided that the act should take effect on and after January 1, 2020.

**§ 51-115. Certificate of notarial act.** — (1) A notarial act must be evidenced by a certificate. The certificate must:

- (a) Be executed contemporaneously with the performance of the notarial act;
- (b) Be signed and dated by the notary public;
- (c) Identify the jurisdiction in which the notarial act is performed; and
- (d) Indicate the date of expiration, if any, of the notary public's commission.

(2) If a notarial act regarding a tangible or electronic record is performed by a notary public, an official stamp must be affixed to the certificate.

(3) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) of this section and:

- (a) Is in a short form set forth in [section 51-116, Idaho Code](#);
- (b) Is in a form otherwise permitted by the law of this state;
- (c) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
- (d) Sets forth the actions of the notary public and the actions are sufficient to meet the requirements of the notarial act as provided in sections 51-105, 51-106 and 51-107, Idaho Code, or law of this state other than this chapter.

(4) By executing a certificate of a notarial act, a notary public certifies that the notary public has complied with the requirements and made the determinations specified in sections 51-105, 51-106 and 51-107, Idaho Code.

(5) A notary public may not affix the notary public's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(6) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is

performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to [section 51-127, Idaho Code](#), for attaching, affixing or logically associating the certificate, the process must conform to the standards.

**History.**

[I.C., § 51-115](#), as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 51-115 was repealed. See Prior Laws, § 51-101.

**CASE NOTES**

[Construction of certificate.](#)

[Cure of deficiencies.](#)

[Impeachment of certificate.](#)

[Personal appearance.](#)

[Question for court.](#)

[Substantial compliance.](#)

**[Construction of Certificate.](#)**

In aid of a certificate of acknowledgment, reference may be had to the whole instrument or to any part thereof, and certificates of acknowledgment will be upheld when the substance is found, and conveyances of proof of them will not be defeated by technical or unsubstantial objections. [Pacific Coast Joint Stock Land Bank v. Security Prods. Co., 56 Idaho 436, 55 P.2d 716 \(1936\).](#)

Technical deficiencies in the certificate of acknowledgment will not render the certificate defective, if the alleged deficiency can be cured by



reference to the instrument itself. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Cure of Deficiencies.**

Technical deficiencies in the certificate of acknowledgment may be cured by reference to the instrument itself. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

### **Impeachment of Certificate.**

Notary may not testify to any fact tending to impeach a certificate of acknowledgment made by him. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

### **Personal Appearance.**

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment, but without requiring the personal appearance of the acknowledgers; however, whether the certificate blanks are empty or full is not the significant fact, since the key to the statutory safeguard is the integrity of the notary in the proper discharge of notarial duties by requiring the signatories to personally appear before him and acknowledge that they did in fact execute the document. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Question for Court.**

Where defendants in quiet title suit attached a copy of a purported oil and gas lease, executed by plaintiffs, covering land in question, to their answer and annexed the affidavit of a third party respecting execution and acknowledgment of lease, plaintiffs' general demurrer to the answer admitted facts shown by the affidavit and submitted to trial court the question as to whether there was a valid acknowledgment of purported lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

### **Substantial Compliance.**

Idaho has generally adhered to the view that substantial compliance with the statutory requirements regarding acknowledgments will suffice. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

## **COMMENT TO OFFICIAL TEXT**

Subsection (a) provides that a notarial act must be evidenced by a certificate of notarial act. It sets out the requirements of that certificate:

Subsection (a)(1) — The certificate must be executed contemporaneously with the performance of a notarial act. The performance of a notarial act may take some period of time to accomplish, especially in large transactions with long closings. The fact that the certificate is not executed by the notarial officer immediately after the individual signs and acknowledges a deed would not necessarily demonstrate a lack of contemporaneous execution. However, a certificate that is not executed until some days after an individual signs and acknowledges a deed and the transaction is closed would not be a contemporaneous execution.

Subsection (a)(2) — The certificate must be signed and dated by the notarial officer. If the notarial officer is a notary public, the signature must be signed in the same manner as the signature that is on file with the commissioning officer or agency. For example, if a signature on file with the commissioning officer or agency contains the notary public's middle initial, the signature on the certificate must also contain the initial.

Subsection (a)(3) — The certificate must identify the jurisdiction in which the notarial act is performed. This is normally done by identifying the state and county in which the notarial act is performed (see Section 16, Short Forms). (Some states allow, on a reciprocity basis, notaries public of this state to perform notarial acts in a neighboring state or in counties in a neighboring state. Nothing in this Act changes or limits that reciprocity).

Subsection (a)(4) — The certificate must identify the title of office of the notarial officer. For example, the office may be notary public or clerk of court. The notarial officer may also be an individual in a military service or performing duties under the authority of a military service, in which case the individual's rank or position should be identified.

Subsection (a)(5) — If the officer is a notary public, the certificate must contain the expiration date of the notary public's commission, if any. In some states, the expiration date will be part of a notary public's official stamp (see Section 17(1)) and the use of the official stamp will satisfy the requirements of this subsection. However, if a notary public's official stamp

does not contain the expiration date because it is not required under Section 17(1) or if a notary public is not required use an official stamp under subsection (b), the expiration date of the notary public's commission must be separately inserted.

Subsection (b) identifies those circumstances in which the certificate of notarial act must contain the official stamp of the notarial officer.

If the notarial act is performed with respect to a tangible medium and is performed by a notary public, subsection (b) requires that the notary public's official stamp be affixed to or embossed on the certificate of notarial act.

If the notarial act is performed with respect to a tangible medium and is performed by a notarial officer other than a notary public, subsection (b) states that an official stamp may be attached to or embossed on the certificate of notarial act. However, although permitted, it is not required by this act. Whether a notarial officer other than a notary public is required to use an official stamp and what the contents of that stamp may be will depend on other law of this state. That law may not require the use of a stamp or it may require the use of a stamp but may specify other contents. Regardless of whether an official stamp is attached to or embossed on the certificate, the certificate nevertheless must, at a minimum, contain the information specified in subsections (a)(2), (3) and (4).

If the notarial act is performed with respect to an electronic record by a notarial officer, whether a notary public or otherwise, subsection (b) states that the officer's official stamp may be attached to, or associated with, the electronic certificate of notarial act. However, although permitted, this subsection does not require that a notarial officer's official stamp be attached to or logically associated with an electronic certificate. Regardless of whether an official stamp is attached to or logically associated with an electronic certificate, the electronic certificate nevertheless must, at a minimum, contain the information specified in subsections (a)(2), (3) and (4). These are the same provisions found in URPERA § 3(c), UETA § 11, and ESign § 101(g) regarding the performance of notarial acts with respect to electronic records.

Subsection (c) provides that if the certificate of notarial act meets the requirements of subsections (a) and (b), it may be in (1) the appropriate

short form set out in Section 16, (2) any other form permitted by the law of this state, (3) any other form permitted by the law of the place where the notarial act is performed if other than this state, or (4) any form that sets forth the actions of the notarial officer if those actions meet the requirements of Sections 5, 6, and 7 or law other than this act, whether state or federal. Thus, acknowledgments and other notarial acts may be in the short forms provided in Section 16 or may be in more prolix and elaborate traditional forms provided they contain the required information.

Subsection (d) emphasizes the obligation of the notarial officer to comply with the requirements of, and to make the determinations required by, Sections 5, 6, and 7. By executing the certificate, the notarial officer certifies that the officer has done so.

Subsection (e) provides that the notarial officer may not sign the certificate until the notarial act has been fully performed (compare [N.C. Gen. Stat. § 10B-35](#) (2009)).

Subsection (f) seeks to assure the unified integrity of the record and the related certificate of notarial act. With respect to a notarial act evidenced on a tangible record, this subsection requires that the certificate must be a part of, or securely attached to, the record. If the certificate is not a part of the record itself, the means of attaching the certificate to the record are not specified. However, stapling is a common means.

Affixing an electronic certificate to, or associating it with, an electronic record requires sophisticated technology. There are multiple technologies by which the affixing or associating may be accomplished and those technologies will undoubtedly change over time as technologies improve and change. Accordingly, subsection (f) does not adopt any particular technology or limit the affixing or associating to technologies that are currently available. Rather, it provides that the certificate must be affixed to, or logically associated with, the electronic record in accordance with standards as may be approved by the commissioning officer or agency. The standards are left to the determination of the commissioning officer or agency under Section 27 and will depend on the available technology and the degree of security provided by available technology. In the absence of standards adopted by the commissioning officer or agency, the notary public may proceed with performing notarial acts with respect to electronic

records as long as the notary public employs tamper evident technologies as required by Section 20.

Idaho Code § 51-116

**§ 51-116. Short form certificates.** — The following short form certificates of notarial acts are sufficient for the purposes indicated if completed with the information required by section 51-115(1) and (2), Idaho Code:

(1) For an acknowledgment in an individual capacity: State of \_\_\_\_\_

County of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_

Date

by \_\_\_\_\_

Name(s) of individual(s)

\_\_\_\_\_  
Signature of notary public

(Stamp)

My commission expires: \_\_\_\_\_

(2) For an acknowledgment in a representative capacity: State of \_\_\_\_\_

County of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_

Date

by \_\_\_\_\_

Name(s) of individual(s)

as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed) \_\_\_\_\_

\_\_\_\_\_  
Signature of notary public

(Stamp)

My commission expires: \_\_\_\_\_

(3) For a verification on oath or affirmation: State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_

Date

by \_\_\_\_\_

Name(s) of individual(s) making statement \_\_\_\_\_

Signature of notary public

(Stamp)

My commission expires: \_\_\_\_\_

(4) For witnessing or attesting a signature: State of \_\_\_\_\_

County of \_\_\_\_\_

Signed (or attested) before me on \_\_\_\_\_ by \_\_\_\_\_

Date Name(s) of individual(s)

Signature of notary public

(Stamp)

My commission expires: \_\_\_\_\_

(5) For certifying a copy of a record:

State of \_\_\_\_\_

County of \_\_\_\_\_

I certify that this is a true and correct copy of a record in the possession of \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of notary public

(Stamp)

My commission expires: \_\_\_\_\_

(6) If the notarial act is performed on behalf of a remotely located individual and utilizing communication technology under [section 51-114A, Idaho Code](#), the certificates in this section shall include a statement substantially as follows: “This notarial act involved the use of communication technology.”

**History.**

[I.C., § 51-116](#), as added by 2017, ch. 192, § 3, p. 440; am. 2019, ch. 160, § 5, p. 521.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-116 was repealed. See Prior Laws, § 51-101.

**Amendments.**

The 2019 amendment, by ch. 160, added subsection (6).

**Effective Dates.**

Section 7 of S.L. 2019, ch. 160 provided that the act should take effect on and after January 1, 2020.

**CASE NOTES**

[Acknowledgment regular on its face.](#)

[Applicability.](#)

[Cure of deficiencies.](#)

[Personal appearance.](#)

[Statement of authority.](#)



Substantial compliance.

### **Acknowledgment Regular on Its Face.**

A certificate of acknowledgment, complete and regular on its face, raises a presumption in favor of the truth of every fact recited therein, which the uncorroborated testimony of the party acknowledging the instrument is insufficient to overcome, and the additional affidavit of the notary that he could not recall any of the circumstances surrounding the execution and acknowledgment of an instrument, although it had sometimes been his practice to take an acknowledgment in the absence of the signing party, was insufficient to impeach the validity of the acknowledgment. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

### **Applicability.**

Because a memorandum of sale was executed by a personal representative, former § 55-713 [now see § 51-116A], not this section, provides the form required for the certificate of acknowledgment. A memorandum of sale that is not properly acknowledged cannot be recorded. *Salladay v. Bowen*, 161 Idaho 563, 388 P.3d 577 (2017).

### **Cure of Deficiencies.**

Technical deficiencies in the certificate of acknowledgment may be cured by reference to the instrument itself. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

### **Personal Appearance.**

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers; however, whether the certificate blanks are empty or full is not the significant fact, since the key to the statutory safeguard is the integrity of the notary in the proper discharge of notarial duties by requiring the signatories to personally appear before him and acknowledge that they did in fact execute the document. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

### **Statement of Authority.**

Nothing in the statutes requires the acknowledgment to include a specific statement of corporate authority. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

### **Substantial Compliance.**

Where corporate form acknowledgment established notary's personal knowledge of signer's office and, when read together with quitclaim deed, made it apparent that corporation executed the deed, such acknowledgment substantially complied with statutory requirements. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Since this section requires substantial compliance, but not strict compliance with the prescribed form, a certificate that stated that the grantors personally appeared before the notary and the notary's affidavit established that he knew the signers to be the persons who executed the deed, the acknowledgment was valid and was sufficient to impart constructive notice to the trustee. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 753 F.2d 804 (9th Cir. 1985).

Strict compliance with the statutory form set forth in this section is not required; substantial compliance with the statutory requirements is sufficient. Thus, where the certificate did not contain the words "known or identified to me (or proved to me on the oath of \_\_\_\_), to be the person whose name is subscribed to the within instrument," but where the record disclosed that the notary did in fact know that the persons who executed the certificate of acknowledgment were the same persons who executed the written instrument, the acknowledgment substantially complied with the statutory requirements and forms. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 107 Idaho 711, 692 P.2d 355 (1984).

## **COMMENT TO OFFICIAL TEXT**

This section provides statutory short form certificates of various notarial acts. These forms are sufficient to document a notarial act in this state. See Section 15(c)(1). Other forms may also qualify as stated in Section 15(c)(2), (3), and (4).

These certificates may be used for notarial acts performed on tangible records as well as those performed with respect to electronic records. They

are available for notarial acts performed by notaries public as well as notarial officers who are not notaries public. Under Section 15(b), an official stamp is required on the certificate if the notarial act is performed on a tangible record by a notary public. Under Section 15(b), if the notarial act is performed on a tangible record by a notarial officer other than a notary public or is performed by any notarial officer on an electronic record, an official stamp is optional, but the information or acts specified in Section 15(a)(2), (3) and (4) must be supplied. The short forms provided in this section call for the insertion of that information or the performance of those acts.

The calls in each of the forms for state and county information refer to the state and county where the notarial act is performed.

**§ 51-116A. Acknowledgment by entity on behalf of another entity. —**

(1) As used in this section:

(a) A corporation, partnership, limited liability company, trust or other legal entity that is the party executing an instrument and the party, or one of the parties, to be bound thereby shall be referred to as the “maker” of the instrument; (b) A corporation, partnership, limited liability company, trust or other legal entity that is a partner, manager, member, trustee or other authorized representative of the maker shall be referred to as the “constituent entity” of the maker; (c) The natural person who signs the written instrument as an officer, partner, manager, member, trustee or other authorized representative of the constituent entity shall be referred to as the “signer”; and (d) An acknowledgment of an instrument executed by a maker acting through a constituent entity shall be referred to as a “compound acknowledgment.”

(2) A compound acknowledgment of an instrument shall be made in a form that substantially conforms to the statutory form of acknowledgment for an entity of the same legal form as either the maker or the constituent entity; provided, however, that any acknowledgment that satisfies the requirements of subsection (3) of this section shall suffice.

(3) A compound acknowledgment shall: (a) Identify the signer;

(b) State the signer’s official title, capacity or authority to sign on behalf of the constituent entity, or recite that the signer is authorized to sign on behalf of the constituent entity; (c) Identify the constituent entity or constituent entities; (d) Recite the constituent entity’s official title, capacity or authority to act on behalf of the maker, or the relationship of the constituent entity to the maker, or the position the constituent entity holds in or with the maker, or that the constituent entity is authorized to act on behalf of the maker; and (e) Identify the maker.

(4) As an example only, a compound acknowledgment for a maker that is a partnership, acting through a constituent entity that is a corporation, may take the following form: STATE OF \_\_\_\_\_ ) ) ss.

COUNTY OF \_\_\_\_\_ ) On this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for  
said State, personally appeared \_\_\_\_\_ (signer), known or identified  
to me (or proved to me on the oath of \_\_\_\_\_) to be the \_\_\_\_\_  
(officer title) of \_\_\_\_\_ (constituent entity) a \_\_\_\_\_  
corporation, one of the partners in the partnership of \_\_\_\_\_ (maker),  
a \_\_\_\_\_ partnership, and the partner or one of the partners who  
subscribed said partnership name to the foregoing instrument, and  
acknowledged to me that he executed the within instrument on behalf of  
said corporation, and that such corporation executed the same in said  
partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

### **History.**

I.C., § 51-116A, as added by 2017, ch. 192, § 3, p. 440.

## **CASE NOTES**

**Applicability.**

**Deficiency.**

**Applicability.**

Because a memorandum of sale was executed by a personal representative, this section provides the form required for the certificate of acknowledgment. A memorandum of sale that is not properly acknowledged cannot be recorded. *Salladay v. Bowen*, 161 Idaho 563, 388 P.3d 577 (2017).

**Deficiency.**

Where a notary's endorsement of a memorandum of sale was not a certificate used for acknowledgments, but was the endorsement used for oaths and affirmations, the deficiency could not be cured by reference to the instrument. [Salladay v. Bowen, 161 Idaho 563, 388 P.3d 577 \(2017\)](#).

**§ 51-117. Official stamp.** — The official stamp of a notary public:

(1) Must include the notary public's name, the words "Notary Public," the words "State of Idaho," and the notary's state-issued commission number;

(2) Must include a serrated or milled-edge border in a rectangular or circular form;

(3) May include the words "my commission expires:" followed by the notary's current commission expiration date;

(4) Must be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated; and

(5) May not include anything more than that which is allowed in subsections (1) through (3) of this section.

**History.**

I.C., § 51-117, as added by 2017, ch. 192, § 6, p. 440; am. 2018, ch. 77, § 1, p. 174.

## STATUTORY NOTES

**Prior Laws.**

Former § 51-117 was repealed. See Prior Laws, § 51-101.

**Amendments.**

The 2018 amendment, by ch. 77, inserted present subsection (2) and redesignated the subsequent subsections accordingly; and substituted "subsections (1) through (3)" for "subsections (1) and (2)" in subsection (5).

**Compiler's Notes.**

Effective October 1, 2018, S.L. 2017, ch. 192, § 5 repealed a version of this section, enacted by S.L. 2017, ch. 192, § 4, and S.L. 2017, ch. 192, § 6 enacted a new version.

## **Effective Dates.**

Section 16 of S.L. 2017, ch. 192 provided that the enactment of this section by section 6 of S.L. 2017, ch. 192 is effective October 1, 2018.

Section 6 of S.L. 2018, ch. 77 provided that the amendment of this section should take effect on and after October 1, 2018.

## **CASE NOTES**

### **Clerical Errors.**

Where a notary public of the state of Utah took an acknowledgment for a mortgage on land in Idaho and used a printed form for such acknowledgment, the fact that the printed word “Idaho” was crossed out in two places but was not crossed out in the third place did not render the certificate invalid, because such an omission was merely a clerical error. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

## **COMMENT TO OFFICIAL TEXT**

This section sets forth two requirements for a notary public’s official stamp, whether the stamp is a physical image attached to, or embossed on, a tangible certificate of notarial act or an electronic image attached to, or logically associated with, an electronic certificate of notarial act.

Subsection (1) provides that the official stamp must state the notary public’s name. Since Subsection 15(a)(2) requires that a notary public sign the notary’s name as it appears on file with the commissioning officer or agency, the name of the notary on the official stamp should also conform with the name on file with the commissioning officer of agency. The official stamp must state the jurisdiction in which the notary public is commissioned. An optional provision states that the official stamp must set forth the date on which the notary public’s commission expires. Finally, the official stamp must include any other information that is required by the commissioning officer or agency.

Subsection (2) [now (4)] requires that the official stamp be capable of being copied together with the record to or with which it is attached or



logically associated. Thus, for example, an official stamp that is affixed with a rubber stamping device and ink must provide a clear image in an ink that is capable of being copied. An official stamp that is affixed by embossing must do so in such a way that the information in the embossment is capable of being copied. An official stamp that is attached to, or logically associated with, an electronic record must be capable of being copied by the same technology by which the electronic record is copied.

**§ 51-118. Stamping device.** — (1) The stamping device for tangible records must be an inked stamp that provides an image of the notary's official stamp that meets the requirements of section 51-117, Idaho Code, and that is readily visible upon copying. The stamp shall not exceed two and one-fourth (2.25) inches by one (1) inch if rectangular or one and three-fourths (1.75) inches in diameter if circular.

(2) The stamping device for electronic records must be an electronic device or process that provides an image of the notary's official stamp that meets the requirements of [section 51-117, Idaho Code](#), and that is readily visible upon copying.

(3) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(4) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall promptly notify the commissioning officer or agency on discovering that the device is lost or stolen.

### **History.**

[I.C., § 51-118](#), as added by 2017, ch. 192, § 7, p. 440; am. 2018, ch. 77, § 2, p. 174.

## **STATUTORY NOTES**

### **Prior Laws.**

Former § 51-118 was repealed. See Prior Laws, § 51-101.

### **Amendments.**

The 2018 amendment, by ch. 77, in the first sentence in subsection (1), inserted “for tangible records” and “of the notary’s official stamp that meets the requirements of [section 51-117, Idaho Code](#), and”; and inserted present subsection (2) and redesignated the subsequent subsections accordingly.

### **Effective Dates.**

Section 16 of S.L. 2017, ch. 192 provided that the enactment of this section by section 7 of S.L. 2017, ch. 192 is effective October 1, 2018.

Section 6 of S.L. 2018, ch. 77 provided that the amendment of this section should take effect on and after October 1, 2018.

## **COMMENT TO OFFICIAL TEXT**

In order to protect and maintain the integrity of notarial acts, it is important that a notary public’s stamping device be kept secure and out of the hands of other individuals who might use it fraudulently or erroneously. Accordingly, subsection (a) provides that a notary public is responsible for maintaining the security of notary’s stamping device. Similarly, it provides that a notary public may not allow another individual to use the device.

In order to assure the integrity of the notarial system, the optional (bracketed) sentences of subsection (a) provide that the notary public may not continue to possess the official stamp once the notary is no longer serving as a notary public. The first optional sentence provides that upon the resignation of the notary public’s commission, the revocation or expiration of the notary’s commission, or the expiration of the date set forth in the stamping device, the notary must disable the device by destroying, defacing, damaging, erasing or securing it in a manner that renders it unusable. Similarly, the second optional sentence provides that upon the death or incompetency of a notary public, if the notary public’s personal representative is knowingly in possession of the stamping device, the representative must render the stamping device unusable by destroying, defacing, damaging, erasing or securing it. (Compare [N.C. Gen. Stat. § 10B-36\(a\)](#) (2009).)

Subsection (b) [now (4)] recognizes that if the official stamp is lost or stolen, the possibility of fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the commissioning officer or agency as soon as the notary discovers that the stamp is lost or stolen. The commissioning officer or agency may be able to take other steps to provide notification that will further protect the public (compare [Ariz. Rev. Stat. § 41-323](#) (2010); [N.C. Gen. Stat. § 10B-36\(c\)](#) (2009).)

Idaho Code § 51-119

**§ 51-119. [Reserved.]**

**History.**

I.C., § 51-119, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Prior Laws.**

Former § 51-119 was repealed. See Prior Laws, § 51-101.

**§ 51-120. Notification regarding performance of notarial act on electronic record — Selection of technology — Acceptance of tangible copy of electronic record.** — (1) A notary public may select one (1) or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology pursuant to [section 51-127, Idaho Code](#), the technology must conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

(3) A recorder shall accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

#### **History.**

[I.C., § 51-120](#), as added by 2017, ch. 192, § 3, p. 440; am. 2019, ch. 160, § 6, p. 521.

### **STATUTORY NOTES**

#### **Cross References.**

Secretary of state, § 67-901 et seq.

#### **Prior Laws.**

Former § 51-120 was repealed. See Prior Laws, § 51-101.

#### **Amendments.**

The 2019 amendment, by ch. 160, added “— Acceptance of tangible copy of electronic record” at the end of the section heading; and added subsection (3).

### **Effective Dates.**

Section 7 of S.L. 2019, ch. 160 provided that the act should take effect on and after January 1, 2020.

## **COMMENT TO OFFICIAL TEXT**

Subsection (a) provides that a notary public may elect to perform notarial acts with respect to electronic records and, for the purpose of performing those notarial acts, may select one or more technologies. This allows a notary to use more than one technology in order to accommodate clients using different technologies to perform their electronic transactions. However, a notary public may determine whether to use a technology requested by a client and may refuse to do so.

Any technology that the notary selects must be a tamper evident technology. A tamper evident technology is one that is designed to allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.

Subsection (b) requires that, before performing the notary public’s initial notarial act with respect to an electronic record, a notary public must notify the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records. When a notary provides a notification to the commissioning officer or agency, the notary must also identify the technology or technologies that the notary intends to use to perform the notarial acts.

If, at the time that a notary public provides the notification to the commissioning officer or agency, the commissioning officer or agency has established standards for the approval of technology to be used to perform notarial acts with respect to electronic records, any technology selected by the notary must conform to those standards. If the technology conforms to those standards, the commissioning officer or agency must approve it for

use by the notary. In the absence of standards adopted by the commissioning officer or agency, the notary public may proceed with performing notarial acts with respect to electronic records as long as the notary public employs tamper evident technologies as required by this section.



**§ 51-121. Commission as notary public — Qualifications — No immunity or benefit — Reappointment.** — (1) An individual qualified under subsection (2) of this section may make application to the secretary of state for a commission as a notary public. The application shall be in a form and manner prescribed by the secretary of state and shall include an oath of office to be taken by the applicant. The applicant shall comply with and provide the information required by the secretary of state and pay any application fee.

(2) An applicant for a commission as a notary public must:

- (a) Be at least eighteen (18) years of age;
- (b) Be a citizen or permanent legal resident of the United States;
- (c) Be a resident of or have a place of employment or place of practice in this state; and
- (d) Be able to read and write.

(3) At the time of submitting the application, the applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of ten thousand dollars (\$10,000).

(a) The assurance must be issued by:

- (i) A surety or other entity licensed or authorized to do business in this state; or
  - (ii) The risk management office [risk management program] in the department of administration for the state of Idaho if the applicant is regularly employed by the state and the commission is required in the scope of that employment.
- (b) The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty (30) days' notice

to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state no later than thirty (30) days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

(4) On compliance with this section, the secretary of state shall review and may issue a commission as a notary public to an applicant for a term of six (6) years or may deny the application pursuant to [section 51-123, Idaho Code](#).

(5) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

(6) A notary public may be reappointed upon submission of a new application no earlier than ninety (90) days prior to the expiration of his term.

### **History.**

[I.C., § 51-121](#), as added by 2017, ch. 192, § 3, p. 440; am. 2018, ch. 77, § 3, p. 174.

## **STATUTORY NOTES**

### **Cross References.**

Secretary of state, § 67-901 et seq.

### **Prior Laws.**

Former § 51-121 was repealed. See Prior Laws, § 51-101.

### **Amendments.**

The 2018 amendment, by ch. 77, added “— Reappointment” in the section heading; in subsection (1), substituted “make application” for “apply” in the first sentence and inserted the present second sentence; deleted former paragraph (2)(e), which read: “Not be disqualified to receive a commission under [section 51-123, Idaho Code](#)”; deleted former subsection (3), which read: “Before issuance of a commission as a notary

public, an applicant for the commission shall execute an oath of office and submit it to the secretary of state” and redesignated the subsequent subsections accordingly; in present subsection (3), substituted “At the time of submitting the application” for “Before issuance of a commission as a notary public”; in present subsection (4), inserted “review and may” and added “or may deny the application pursuant to [section 51-123, Idaho Code](#)” at the end; and added subsection (6).

### **Compiler’s Notes.**

The bracketed insertion in paragraph (3)(a)(ii) was added by the compiler to correct the name of the referenced agency. See <http://adm.idaho.gov/risk/>.

### **Effective Dates.**

Section 6 of S.L. 2018, ch. 77 provided that the amendment of this section should take effect on and after July 1, 2018.

## **CASE NOTES**

### **Decisions Under Prior Law**

#### **Timeliness of Claim.**

Chapter 7 trustee’s adversary proceeding alleging that a notary public and the notary’s employer were liable under this section for damages the notary caused when she notarized the forged signature of a debtor on a deed of trust was not time-barred, even though the trustee filed his adversary proceeding on March 25, 2009, more than three years after the notary notarized the debtor’s signature. Subsection (4) of § 5-219 gave the debtor two years from the date he discovered the notary’s misconduct to file a lawsuit. The debtor discovered the notary’s conduct in May 2006, and declared bankruptcy on March 28, 2008. [11 U.S.C.S. § 108](#) extended the period the trustee had to file his adversary proceeding until March 28, 2010. [Gugino v. Alliance Title & Escrow Corp. \(In re Ganier\), 2010 Bankr. LEXIS 1444 \(Bankr. D. Idaho May 3, 2010\).](#)

## **COMMENT TO OFFICIAL TEXT**

Subsection (a) provides that an individual qualified under subsection (b) may apply to the commissioning officer or agency to obtain a commission as a notary public. The subsection 46 applies to an individual seeking an initial or renewal commission. It leaves the form of application, the process for applying, and the timing of the process, as well as other administrative matters to be determined by the commissioning officer or agency pursuant to authority provided in Section 27. It also allows the commissioning officer or agency to establish the fee to be charged for issuance of the commission, if otherwise permitted by law of the state. Although the statutes of some states specify the process and timing for issuance of a commission in varying detail (compare [Ariz. Rev. Stat. § 41-312](#) (2010); [Cal. Govt. Code § 8206](#) (2010); [Del. Code Ann. tit. 29, 4301](#) (2010)), this Act leaves the determination and implementation of those provisions to rules adopted by the commissioning officer or agency.

Subsection (b) sets out qualifications that an applicant must meet in order to be entitled to the issuance of a commission as a notary public. The qualifications under various existing state statutes are quite varied. The requirements listed in this subsection are common although not uniform among the states (compare [Ariz. Rev. Stat. § 41-312\(E\)](#) (2010)). They are the minimal requirements for an individual to be entitled to the issuance of a commission as a notary public.

The requirement in subsection (b)(1) which provides that an applicant must be at least 18 years of age is a minimum age requirement. A state may wish to increase the age if another age better comports with other law of the state. The word “English” in subsection (b)(4) is bracketed because, in some jurisdictions such as Puerto Rico, the legislature may wish to use another language either as a substitute or as an alternative.

Subsection (c) [now part of subsection (1)] provides that before an applicant will be issued a commission as a notary public the applicant must execute and submit an oath of office to the commissioning officer or agency (compare [5 Me. Rev. Stat. Ann. § 82\(3-A\)](#) (2010)).

Subsection (d) [now (3)] is an optional provision. Depending on the version selected by the legislature, it provides that a notary public must either submit an assurance in the form of a surety bond or its functional equivalent to the commissioning officer or agency not more than 30 days

after the notary has been issued a commission, or that an applicant must submit the assurance to the commissioning officer or agency before the issuance of the commission (compare [Fla. Stat § 117.01\(7\)\(a\)](#) (2010); [Tex. Govt. Code § 406.010\(a\)](#) (2010)). If the legislature enacts the alternative requiring a notary public to submit the assurance within thirty days after the notary has been issued a commission, the last sentence of this subsection prohibits the notary from performing a notarial act until the assurance is on file with the commissioning officer or agency. An example of an assurance that is the functional equivalent of a surety bond would be an irrevocable letter of credit issued by a bank as long as that letter of credit meets the requirements established by the commissioning officer or agency under Section 27(a)(6).

The monetary amount of the assurance is not specified and is left to the state legislature to determine. It is recognized that an assurance that would cover the full amount of many transactions for which notaries perform notarial acts would be very large and might be prohibitively expensive. Nevertheless, limited but reasonable assurance amounts would cover the amount of some ordinary transactions and would provide some, although limited, recovery in other transactions. Requiring a surety bond or its functional equivalent should also emphasize to a notary that the notary's function is a significant one and that it is not a meager or trivial one.

An assurance must be issued by a surety or other entity that is authorized to do business in this state. It must be in the form prescribed by the commissioning officer or agency under Section 27(a)(6). It must cover acts performed by a notary during the term of the notary's commission. A surety or issuing entity will be liable under an assurance if the notary violates the law of this state with regard to the performance of notarial acts during the term of the assurance. A surety or issuing entity must give the commissioning officer or agency 30 days notice prior to cancelling a bond or other form of assurance and must notify the commissioning officer or agency within 30 days after making a payment to a claimant under a bond or other form of assurance. A notary public may perform notarial acts only while an assurance is on file with the commissioning officer or agency.

Subsection (e) [now (4)] provides that upon compliance with the requirements of subsection (a) through (c), or (a) through (d) if subsection (d) is adopted, the commissioning officer or agency will issue the applicant

a commission as a notary public. The term of the commission is to be determined by the state legislature; the legislature may also determine that the commission is to be without term.

Subsection (f) [now (5)] recognizes that a notary public is an individual licensed by the commissioning officer or agency and not a public official or employee of the state. Accordingly, it provides that a notary does not have any of the immunities or benefits conferred by the law of this state on public officials or employees.

**§ 51-122. Course of study.** — The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures and ethics relevant to notarial acts.

**History.**

I.C., § 51-122, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 51-122 was repealed. See Prior Laws, § 51-101.

**Effective Dates.**

Section 16 of S.L. 2017, ch. 192 provided that the enactment of this section by section 3 of S.L. 2017, ch. 192 is effective July 1, 2019.

**§ 51-123. Grounds to deny, revoke, suspend or condition commission of notary public.** — (1) The secretary of state may deny, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence or reliability to act as a notary public, including:

- (a) Failure to comply with the provisions of this chapter;
- (b) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary of state;
- (c) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;
- (d) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;
- (e) Failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the secretary of state or any federal or state law;
- (f) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;
- (g) Violation by the notary public of a rule of the secretary of state regarding a notary public;
- (h) Denial, revocation, suspension of, or placing a condition on a notary public commission in another state; or
- (i) Failure of the notary public to maintain an assurance as provided in [section 51-121, Idaho Code](#).

(2) If the secretary of state denies, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 52, title 67, Idaho Code.



(3) The authority of the secretary of state to deny, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

**History.**

I.C., § 51-123, as added by 2017, ch. 192, § 3, p. 440; am. 2018, ch. 77, § 4, p. 174.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**Prior Laws.**

Former § 51-123 was repealed. See Prior Laws, § 51-101.

**Amendments.**

The 2018 amendment, by ch. 77, deleted “refuse to renew” preceding “revoke” in the section heading and the introductory paragraph in subsection (1); substituted “revocation, suspension of” for “refusal to renew, revocation, or suspension of” in paragraph (1)(h), and updated a reference in paragraph (1)(i); deleted “refuses to renew” preceding “revokes” in subsection (2); and deleted “refuse to renew” preceding “suspend” in subsection (3).

**Effective Dates.**

Section 6 of S.L. 2018, ch. 77 provided that the amendment of this section should take effect on and after July 1, 2018

**Official Comment**

Subsection (a) lists the grounds upon which the commissioning officer or agency may deny, refuse to renew [now deleted], revoke, suspend, or impose a condition a commission. The general grounds listed include a lack of honesty, integrity, competency, or reliability on the part of the applicant or current notary public. The grounds are similar to those provided in many

states (compare [Ariz. Rev. Stat. § 41-330\(A\)](#) (2010); [N.C. Gen. Stat. § 10B-5\(d\)](#) (2010)).

Subsections (a)(1) to (6) and (8) enumerate specific grounds upon which the commissioning officer or agency may deny, refuse to renew [now deleted], suspend, revoke or impose a condition a commission. Subsection (a)(7) allows the commissioning officer or agency to refuse to renew, suspend, revoke, or impose a condition a commission because the notary public has violated rules adopted by the commissioning officer or agency regarding notaries public.

Although the grounds for disciplinary action stated in this subsection provide the commissioning officer or agency with substantial authority to invoke discipline on the applicant or notary public in order to protect the public, paragraph 10 allows legislatures to add other specific grounds.

Because notaries public deal with financial, personal, and confidential matters for their clients, trustworthiness and honesty are essential qualities of a person holding a commission. Many of the disciplinary grounds provided in this subsection deal with breaches of those qualities (compare [Cal. Govt. Code § 8201.1\(a\)](#) (2010)). Subsections (a)(2), (3) and (4) specify several situations in which lack of those qualities, *i.e.* fraud, dishonesty and deceitfulness, may arise and upon which the commissioning officer or agency may deny, refuse to renew, revoke, suspend, or impose a condition on a commission. Subsection (a)(6) allows disciplinary action if dishonesty or deceitfulness is displayed by the use of false or misleading advertising. If optional Section 21(d) is adopted, subsection (a)(8) allows disciplinary action if a notary public refuses to obtain, has been unable to obtain, or has been denied, an assurance in the form of a surety bond or its functional equivalent.

In determining whether to deny, refuse to renew [now deleted], suspend, revoke, or impose a condition on a notary public's commission based on an applicant's or commission holder's prior felony under subsection (c), the commissioning officer or agency should take into consideration the relevance of the felony to the performance of the notary public's duties as well as the length of time that has transpired since the performance of the felonious act. The commissioning officer or agency has discretion when

making the determination and should weigh all the facts and circumstances before making a decision.

Subsection (b) states that an applicant or notary public whose commission has been denied, revoked, or suspended, or upon whose commission a condition has been imposed, or who has been refused a renewal of a commission is entitled to a timely notice and a hearing. Such a notice and hearing are likely required by the state's administrative procedure act but are restated here for clarity.

Subsection (c) provides that the fact that a commissioning officer or agency has the authority to deny, refuse to renew [now deleted], suspend, revoke or impose a condition on a commission does not prevent additional relief provided by law. Either the commissioning officer or agency or a person aggrieved by the action of a notary public may seek appropriate relief, whether the relief is civil or criminal.

**§ 51-124. Database of notaries public.** — The secretary of state shall maintain an electronic database of notaries public:

(1) Through which a person may verify the authority of a notary public to perform notarial acts; and (2) That indicates whether a notary public has notified the secretary of state that the notary public will be performing notarial acts on electronic records.

**History.**

I.C., § 51-124, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Cross References.**

Secretary of state, § 67-901 et seq.

**COMMENT TO OFFICIAL TEXT**

This section requires the commissioning officer or agency to maintain an electronic database of notaries public. The objectives sought by this provision are twofold. First, it is a disclosure of information and a means by which a member of the public may verify whether an individual who claims to be a notary public in fact has a commission as a notary public. Second, by also requiring that the database indicate whether a notary public has informed the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records, it provides information to members of the public who are seeking to find a notary public capable of performing notarial acts with respect to electronic records.

**§ 51-125. Prohibited acts.** — (1) A commission as a notary public does not authorize an individual to:

- (a) Assist persons in drafting legal records, give legal advice or otherwise practice law;
- (b) Act as an immigration consultant or an expert on immigration matters;
- (c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or
- (d) Receive compensation for performing any of the activities listed in this subsection.

(2) A notary public may not engage in false or deceptive advertising.

(3) A notary public, other than an attorney licensed to practice law in this state, may not use the term “notario” or “notario publico.”

(4) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.” If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(5) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person who seeks performance of a notarial act by the notary public.

### **History.**

I.C., § 51-125, as added by 2017, ch. 192, § 3, p. 440.

## **COMMENT TO OFFICIAL TEXT**

In general, subsection (a) provides that a notary public does not have the authority to render legal services merely by the fact that the individual has a commission as a notary public. It does recognize, however, that a notary public who is also an attorney at law licensed to practice law in this state may, by the fact that he or she is a licensed attorney, provide those legal services.

Subsection (a) lists four specific activities prohibited to notaries public:

(1) A notary public may not assist persons by drafting legal records or giving legal advice; more generally a notary public may not practice law (compare [Colo. Rev. Stat § 12-55-110.3\(3\)\(b\)\(I\)](#) (2010)).

(2) A notary public may not act as an immigration consultant or an expert on immigration matters (compare [Colo. Rev. Stat § 12-55-110.3\(3\)\(a\)](#) (2010)).

(3) A notary public may not represent a person in any legal or administrative proceedings relating to immigration, United States citizenship or related matters (compare [Colo. Rev. Stat § 12-55-110.3\(3\)\(b\)\(III\)](#) (2010)).

(4) Since a notary public may not perform the above listed activities, a notary public may not receive or collect compensation for performing or attempting to perform those activities (compare [Colo. Rev. Stat § 12-55-110.3\(3\)\(b\)\(II\)-\(III\)](#) (2010)).

Subsections (a)(2) and (3) specifically reference immigration matters because many immigrants, especially those from civil law countries, are familiar with the civil law office of “notario publico” or “notario.” A holder of that civil law office may have the authority to provide immigration advice or assistance in the foreign country. Because of the similarity in the

names of the offices, an immigrant from a civil law country may believe that a notary public is authorized to provide the same assistance in this country. Confusion on the part of the client, however, should not be a reason for a notary public to attempt to provide that assistance. Those subsections clearly prohibit a notary public from providing the assistance. See also subsection (c) for further requirements in this regard.

Subsections (b), (c), and (d) attempt to reduce or eliminate misleading or deceptive advertising by notaries public.

Subsection (b) directly and simply prohibits a notary public from engaging in false or misleading advertising. This prohibition includes the false or misleading advertising specifically described in this section as well as other forms of false or misleading advertising prohibited by other law.

Subsection (c) prohibits a notary public, other than one who is also an attorney licensed to practice law in this state, from using the term “notario publico” or “notario” in the notary’s advertising, title, or informational material. As described above, many immigrants from civil law countries are familiar with the civil law office of “notario publico” or “notario,” a holder of which may have the authority to draft legal records or provide legal advice, including advice on immigration. To prevent notaries public from taking advantage of the similarity of title by using the term “notario publico” or “notario,” this subsection prohibits any advertising using either of those titles (compare [Colo. Rev. Stat § 12-55-110.3\(3\)\(b\)\(V\)](#) (2010)). Since licensed attorneys have, by reason of their attorneys’ licenses the authority to draft documents and provide legal advice, this subsection does not apply to licensed attorneys.

Subsection (d) prohibits a notary public, who is not also an attorney licensed to practice law in this state, from advertising that the notary may draft legal records, provide legal advice, or otherwise practice law. In addition to that prohibition, it makes two specific requirements in any advertising or representation that the notary uses:

(1) Any advertising or representation by the notary must include a specific disclaimer as to the notary’s authority to practice law, to provide legal services, or to collect a fee for those activities. The disclaimer must be provided regardless of whether the advertising is written or oral, or a combination of the two. Included among the situations in which that

disclaimer must be provided are advertising or representations made on broadcast media (e.g. television and radio), print media (e.g. newspapers, newsletters, and magazines), and the Internet (e.g. web pages and banner ads). If the advertising or representation is not made on broadcast media, print media, or the Internet, and if the inclusion of the disclaimer is not possible due to the small size of the advertisement or representation (e.g. business card), the disclaimer must be displayed prominently or provided at the place of performance of the notarial act, including any offpremises locale at which the notary performs a notarial act.

(2) The disclaimer must be provided in each language used in the advertisement or representation. To make sure that any advertising aimed at individuals who are not fluent in English or for whom English is a second language, this subsection requires that the disclaimer must be in each language used in the advertisement or representation.

Subsection (e) prohibits a notary public from retaining an original record presented by a person to a notary. A notary's duties as a notary public are to perform the notarial act and, when completed, return the record to the presenting party or as directed by the presenting party. However, a notary public who is also an attorney licensed to practice law in the state may retain a record for purposes consistent with the performance of legal services. In such a case the attorney is not retaining the record in a notarial capacity.



**§ 51-126. Validity of notarial acts.** — Except as otherwise provided in section 51-104(2), Idaho Code, the failure of a notary public to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notary public. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this chapter or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

**History.**

I.C., § 51-126, as added by 2017, ch. 192, § 3, p. 440.

**COMMENT TO OFFICIAL TEXT**

This section makes it clear that, except as otherwise provided in subsection 4(b), the failure of a notarial officer to perform the duties or to meet the requirements of this act does not invalidate the notarial act performed by the notarial officer. For example, a notarial act performed by a notary public whose assurance or surety bond may have expired or been cancelled is not invalidated. However, this provision only applies to a person who is a notarial officer. The section does not legitimate a notarial act attempted to be performed by a person who does not have the authority to perform the act. For example, an individual who does not have a valid commission as a notary public cannot perform notarial acts and any attempted notarial act would be invalid.

Despite the fact that a notarial act may be valid, the underlying record or transaction may be invalid and may be set aside in appropriate legal proceedings. For example, the underlying record may be the product of fraud, whether performed by the notarial officer or by a third person. In accordance with other law of this state, an action may be brought to invalidate or set aside the record and obtain restitution and other relief.

**§ 51-127. Rules.** — (1) The secretary of state may adopt rules to implement this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may include but are not limited to the following:

- (a) Prescribing the manner of performing notarial acts regarding tangible and electronic records;
- (b) Including provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
- (c) Including provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;
- (d) Prescribing the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;
- (e) Including provisions to prevent fraud or mistake in the performance of notarial acts;
- (f) Establishing the process for approving and accepting surety bonds and other forms of assurance under [section 51-121, Idaho Code](#); and
- (g) Providing for the course of study under [section 51-122, Idaho Code](#).

(2) In adopting, amending or repealing rules about notarial acts with respect to electronic records, the secretary of state may consider, as far as is consistent with the provisions of this chapter:

- (a) The most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;
- (b) Standards, practices and customs of other jurisdictions that substantially enact this chapter; and
- (c) The views of governmental officials and entities and other interested persons.

**History.**

I.C., § 51-127, as added by 2017, ch. 192, § 3, p. 440; am. 2018, ch. 77, § 5, p. 174.

**STATUTORY NOTES****Cross References.**

Secretary of state, § 67-901 et seq.

**Amendments.**

The 2018 amendment, by ch. 77, deleted “(4)” following “51-121” in paragraph (1)(f).

**Compiler’s Notes.**

For more information on the national association of secretaries of state, referred to in paragraph (2)(a), see <http://www.nass.org/>.

**Effective Dates.**

Section 6 of S.L. 2018, ch. 77 provided that the amendment of this section should take effect on and after July 1, 2018.

**COMMENT TO OFFICIAL TEXT**

Subsection (a) is comprehensive authority for the commissioning officer or agency to adopt rules to implement this Act. Any rules adopted with respect to the performance of notarial acts on electronic records must be technology neutral; they may not require or favor one technology or technical specification over another. This is the same requirement provided in ESign, 15 U.S.C. Ch. 96, § 102(a)(2)(ii) (2010).

Subsection (a)(1) authorizes rules that prescribe the manner of performing notarial acts, whether with respect to tangible or electronic records. The provisions of this Act itself were not intended to specify all the possible requirements or procedures that now or in the future may be appropriate for performing notarial acts. Thus, it allows the commissioning officer or agency to adopt rules to further implement the Act.

Subsection (a)(2) authorizes rules that will ensure that any change to, or tampering with, a record bearing a notarial act will be self-evident, *i.e.* tamper evident. Such a procedure will allow an individual inspecting the record to determine whether there has been any tampering with the integrity of a notarial act performed on, or with respect to, a record or with the attachment or association of a certificate of notarial act with the record. This provision applies both to notarial acts performed on tangible records and notarial acts performed with respect to electronic records. Regarding tangible records, this would allow a rule, for example, that requires a certain method of attaching the certificate to the record so that the removal or addition of a page would be readily discernable. With regard to electronic records, this would allow a rule, for example, that requires the technology or process used provide a means of testing to determine whether there has been any change to the electronic certificate or record. Note, however, that such a requirement must be technology neutral and may not require or favor one particular technology or technical specification. See subsection (a).

Subsection (a)(3) authorizes rules that will ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures. This would allow a rule, for example, that requires that a certain level or degree of security be achieved in attaching an electronic certificate of notarial act to, or associating it with, an electronic record, and in its transmission or storage. Once again, the requirement must be technology neutral. See subsection (a).

Subsection (a)(4) authorizes rules for granting and revoking commissions and assuring the trustworthiness of individuals holding a commission. As stated in the Comment to Section 21, that section leaves the form of application, the process for applying, the timing of the process, and other administrative matters to be determined by the commissioning officer or agency. This section authorizes the commissioning officer or agency to adopt a rule, for example, that implements a method by which the prior history of an applicant for a commission could be reviewed with regard to the applicant's trustworthiness.

Subsection (a)(5) authorizes the adoption of rules that will prevent fraud or mistake in the performance of notarial acts. It would authorize the adoption of a rule, for example, that specifies what additional information should be provided in order to guide notaries public under Section 7(c)

regarding additional information to identify an individual for whom a notarial act will be performed.

Subsection (a)(6) allows the commissioning officer or agency to adopt rules regarding the approval and acceptance of surety bonds and other forms of assurance if Section 21(d) is adopted by the legislature.

Subsection (a)(7) authorizes the commissioning officer or agency to adopt rules to implement and administer the examination of applicants for notary public commissions if Section 22 is adopted by the legislature. The rules may also administer the provision of a course of study for applicants for a commission as well as the process of selecting and approving of an entity to offer the course.

Subsection (b) directs the commissioning officer or agency, when adopting, amending, or repealing rules regarding notarial acts performed with respect to electronic records, to consider, so far as is consistent with this Act, the most recent standards promulgated by national bodies such as the National Association of Secretaries of State and also to consider the standards, practices, and customs of other jurisdictions that substantially adopt this Act. The purposes of this provision are to bring to the commissioning officer or agency the best practices and information concerning notarial acts performed with respect to electronic records and to encourage uniformity of those provisions among the various states.

**§ 51-128. Notary public commission in effect.** — A commission as a notary public in effect on the effective date of this act continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after the effective date of this act is subject to and shall comply with the provisions of this chapter. A notary public, in performing notarial acts after the effective date of this act, shall comply with the provisions of this chapter.

**History.**

I.C., § 51-128, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this act,” appearing three times in this section, refers to the effective date of S.L. 2017, chapter 192, which was generally effective July 1, 2017.

**COMMENT TO OFFICIAL TEXT**

This section states that an individual who has a commission as a notary public that is in effect on the date of the adoption of this Act may retain that notary commission until the scheduled date of expiration, if any. Other than as may apply to the length of an existing commission, however, the provisions of the law previously in effect do not carry over after the adoption of this Act. Thus, after the effective date of this Act, a notary is subject to the provisions of this Act with respect to a refusal to renew the commission or a revocation or suspension of the commission. This Act is also applicable to all notarial acts performed after its effective date regardless of whether the commission predated or postdated the effective date of this Act.

**§ 51-129. Savings clause.** — This chapter does not affect the validity or effect of a notarial act performed before the effective date of this act.

**History.**

I.C., § 51-129, as added by 2017, ch. 192, § 3, p. 440.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase “the effective date of this act” refers to the effective date of S.L. 2017, chapter 192, which was generally effective July 1, 2017.

**COMMENT TO OFFICIAL TEXT**

This section expressly provides that the enactment of this Act does not affect either the validity or effect of any notarial act performed prior to the effective date of the Act under a law that was repealed by this Act. The validity and effect of that notarial act will continue to be determined under the repealed law.

**§ 51-130. Uniformity of application and construction.** — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.**

I.C., § 51-130, as added by 2017, ch. 192, § 3, p. 440.

**COMMENT TO OFFICIAL TEXT**

This provision seeks to encourage construction that will maintain uniformity among the various states adopting the Act.



**§ 51-131. Relation to electronic signatures in global and national commerce act.** — This chapter modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

**History.**

I.C., § 51-131, as added by 2017, ch. 192, § 3, p. 440.

**COMMENT TO OFFICIAL TEXT**

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

**§ 51-132. Filing fees.** — (1) The fee for filing an application for appointment as a notary public shall be thirty dollars (\$30.00).

(2) The fee for filing an application for electronic notarization authorization shall be twenty dollars (\$20.00).

(3) There shall be no fee charged for filing a letter of resignation, a certified copy of a judgment of conviction, a certified copy of findings of fact or extract therefrom, public record of proof of material misstatement of fact in an application, certified copy of an order adjudging incompetency, or notice of death.

(4) The fee for filing notice of change of name or address shall be five dollars (\$5.00).

(5) The fee for filing notice of cancellation of a notary bond shall be five dollars (\$5.00).

(6) The fee for a notary public database extraction shall be twenty-five dollars (\$25.00).

(7) The fee for a certified copy of a notary public record shall be ten dollars (\$10.00) plus twenty-five cents (25¢) per page.

**History.**

I.C., § 51-132, as added by 2017, ch. 192, § 3, p. 440.

**§ 51-133. Notary fee.** — (1) A notary public may, for any notarial act, charge a fee not to exceed five dollars (\$5.00).

(2) In addition to the fee, a notary public may be compensated for actual and reasonable expense of travel to a place where the notarial act is to be performed.

(3) An employer shall not require a notary public in his employment to surrender a fee, if charged, or any part thereof to the employer. An employer may, however, preclude such notary public from charging a fee for a notarial act performed in the scope of the notary public's employment.

**History.**

I.C., § 51-133, as added by 2017, ch. 192, § 3, p. 440.



Chapter 2  
COMMISSIONERS OF DEEDS

Sec.

51-201 — 51-207. [Repealed.]

**§ 51-201 — 51-207. Appointment — Duties — Fees. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1864, p. 522, §§ 1-4; 1875, p. 674, § 5; R.S., §§ 300-306; R.C. & C.L., §§ 243-249; C.S., §§ 219-225; I.C.A., §§ 50-201 — 50-207, were repealed by S.L. 1949, ch. 3, § 1.

Idaho Code Title 52

**Title 52**  
**NUISANCES**

Chapter

Chapter 1. Nuisances in General, §§ 52-101 — 52-111.

Chapter 2. Public Nuisances, §§ 52-201 — 52-206.

Chapter 3. Private Nuisances, §§ 52-301 — 52-303.

Chapter 4. Moral Nuisances — Actions for Injunction and Abatement, §§ 52-401 — 52-417.





## Chapter 1

### NUISANCES IN GENERAL

Sec.

52-101. Nuisance defined.

52-102. Public nuisance.

52-103. Moral nuisances — Definitions.

52-104. Moral nuisances — Types.

52-105. Moral nuisances — Personal property — Knowledge of nuisance.

52-106. Moral nuisances — Building where gambling is carried on.

52-107. Private nuisance.

52-108. When not a nuisance.

52-109. Liability of successive owners for continuing nuisance.

52-110. Abatement does not preclude action.

52-111. Actions for nuisance.

**§ 52-101. Nuisance defined.** — Anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

**History.**

I.C., § 52-101, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Cross References.**

Aviation hazard as public nuisance, § 21-502.

Booms or weirs so constructed as to prevent passage of logs or lumber a public nuisance, § 38-807.

Forest or range fire, burning without adequate precautions against spreading, a public nuisance, § 38-107.

Liquor nuisances, § 23-701 et seq.

Similar provision in criminal law, § 18-5901 et seq.

Violation of retail liquor license law a moral nuisance, § 23-937.

**Prior Laws.**

A former chapter 1 of title 52, which comprised C.C.P. 1881, § 471, R.S., §§ 3620-3625, 4529; reen. R.C., §§ 3656, 3657; R.C., §§ 3657a-3657c, as added by 1915, ch. 43, § 2, p. 125; reen. R.C., §§ 3658-3661; R.C., § 4529; am. 1915, ch. 43, §§ 1, 3, 5, p. 125; reen. C.L., §§ 3656-3661, 4529; 1919, ch. 97, p. 361; C.S., §§ 6420-6429, 6956; I.C.A., §§ 51-101 — 51-111, was repealed by S.L. 1976, ch. 82, § 1.

**CASE NOTES**

Damages.

Hog raising facility.

Pleading requirements.

Unsightly structures.

### **Damages.**

Damages may be recovered in addition to an injunction or abatement, but are not a prerequisite to such equitable relief, and the failure to recover damages does not necessarily mean there can be no injunction or abatement, if that equitable relief is otherwise appropriate. *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

### **Hog Raising Facility.**

Given the abundant testimony in the record as to presence of offensive odors at the hog-farm residence, as well as the copious number of flies, it was clear that the district court's nuisance determination was supported by substantial and competent evidence. *Crea v. Crea*, 135 Idaho 246, 16 P.3d 922 (2000).

**Cited** *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983); *Moon v. N. Idaho Farmers Ass'n*, 140 Idaho 536, 96 P.3d 637 (2004).

### **Pleading Requirements.**

Where the homeowner alleged that her home was flooded as the result of a road reconstruction project performed by the city, her complaint was not separated into multiple causes of action; the only theory of recovery identified was negligence; because the complaint failed to include a short and plain statement of her claim for nuisance under this section, the district court properly granted summary judgment for the city. *Brown v. City of Pocatello*, 148 Idaho 802, 229 P.3d 1164 (2010).

### **Unsightly Structures.**

Property owners do not have the right to prohibit, upon adjoining land, the erection of structures that they did not find to be aesthetically pleasing, unless the structure has no useful purpose and was erected only to injure them. *McVicars v. Christensen*, 156 Idaho 58, 320 P.3d 948 (2014).

Burden of proof.  
Channel of natural streams.  
Ditch across road or street.  
Gambling devices.  
Herding sheep near homes.  
Instructions.  
Miner's excavation.  
Motive in erection.  
"Nuisances per se."  
Obstruction of navigable estuary.  
Obstruction of nonnavigable stream.  
Preparation of meat products.  
Railroad.  
Sewage disposal facilities.  
Softball field lights.  
Streets and sidewalks.  
Tourist court encroachments.  
Trees.  
Unsightly buildings.  
Warehouses.  
What constitutes nuisance.

### **Burden of Proof.**

In order to obtain an injunction against or the abatement of an alleged nuisance, the complaining party must show a clear case supporting his right to relief. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

### **Channel of Natural Streams.**

The current of a river cannot be appropriated by a riparian proprietor in Idaho, even assuming the possible persistence in the state of the doctrine of riparian rights, in view of statutes declaring the right of appropriators of water for irrigation or other lawful purpose to use the channel of natural streams for carrying stored water or water diverted from other streams. [Johnson v. Utah Power & Light Co., 215 F.2d 814 \(9th Cir. 1954\).](#)

Where defendant built a series of dams that increased the flow of a river to such an extent that plaintiff's access to his farm land, which was across the river from his place of residence and which situation made it necessary for plaintiff to ford the river in order to reach his farm land, was obstructed and plaintiff sought to recover damages on the theory that the dams constituted a nuisance, court held that, by statute, defendant and other appropriators of water for lawful purposes had right to use channel of natural streams for carrying stored water or water diverted from other streams. [Johnson v. Utah Power & Light Co., 215 F.2d 814 \(9th Cir. 1954\).](#)

### **Ditch Across Road or Street.**

When one constructs ditch across public street in such way as to render street unsafe or inconvenient for travel and maintains the same without a bridge, he is guilty of maintaining a nuisance. [Lewiston v. Booth, 3 Idaho 692, 34 P. 809 \(1893\).](#)

To complete highway across canal, bridge must be built; and, until bridge is built, highway, not being complete, is not capable of being lawfully obstructed at that point; canal, therefore, is not nuisance because of its unlawfully obstructing the free passage or use of highway. [MacCammelly v. Pioneer Irrigation Dist., 17 Idaho 415, 105 P. 1076 \(1909\).](#)

Where canal has been constructed and operated in accordance with law, it is not a nuisance and can become nuisance only by reason of manner in which it is maintained or method of its operation, and mere fact that municipality subsequently extends street across canal which has been lawfully constructed and operated does not convert canal into nuisance at place where street crosses canal. [Boise City v. Boise City Canal Co., 19 Idaho 717, 115 P. 505 \(1911\).](#)

### **Gambling Devices.**

Instruments and devices with which gambling is carried on are nuisances. *Mullen v. Moseley*, 13 Idaho 457, 90 P. 986 (1907).

### **Herding Sheep Near Homes.**

Herding of large band of sheep near homes of settlers, thereby creating offensive smell, is a nuisance. *Sweet v. Ballentyne*, 8 Idaho 431, 69 P. 995 (1902).

### **Instructions.**

The giving of instructions to the jury on the issue of nuisance was not erroneous as raising an issue not pleaded in the complaint where the complaint charged the defendant with acts and conditions which would constitute a nuisance under this section. *Archer v. Shields Lumber Co.*, 91 Idaho 861, 434 P.2d 79 (1967).

### **Miner's Excavation.**

An excavation, pit or shaft made by a miner in the prosecution of his work is not of itself a nuisance. *Strong v. Brown*, 26 Idaho 1, 140 P. 773 (1914).

### **Motive in Erection.**

Where erection of improvement is, in itself, lawful and not per se nuisance, fact that erection is from spite will not subject party to restraint from courts. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

In actions to abate nuisance before question of motive can be gone into or at least before it can have any bearing on result, unlawful character of act complained of must be established. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

### **“Nuisances Per Se.”**

Anything which does not amount to or constitute a substantial obstruction or an inherent interference with the free or comfortable enjoyment of life or property, within the meaning of the statute, is not a public “nuisance per se.” *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

### **Obstruction of Navigable Estuary.**

Where the construction of a fish farm obstructed free passage of a navigable estuary, such fish farm constituted a nuisance as defined by this section. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

### **Obstruction of Nonnavigable Stream.**

Because this section specifically provides that obstruction of navigable stream is nuisance, it does not follow that obstruction of nonnavigable stream is not. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Obstruction of stream which prevents ordinary flow of water for formerly appropriated irrigation purposes is nuisance and may be abated. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Defendant, upstream owner, a junior appropriator of water rights, had no right to damages from plaintiffs, a downstream owner, a prior appropriator, and users of water in his ditch, for removal of dam which was constructed by upstream owner, since the dam constituted a private nuisance and it was plaintiff's right to abate it. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Where plaintiff was entitled to water and dam constituted a private nuisance it was plaintiff's right to abate it and defendant was not entitled to damages resulting from removal of the obstruction by plaintiffs. The equipment plaintiffs took to the site crossed over sagebrush land causing no injury and they had a right to reasonable access to the channel to secure and safeguard their water right. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

### **Preparation of Meat Products.**

The smoking of meats, rendering lard and manufacturing of sausages and other meat products is not per se a nuisance. *Lorenzi v. Star Market Co.*, 19 Idaho 674, 115 P. 490 (1911).

### **Railroad.**

Railroad and the work necessary and incident to its maintenance is not a nuisance and cannot be abated as such. *Boise Valley Constr. Co. v. Kroeger*, 17 Idaho 384, 105 P. 1070 (1909).

### **Sewage Disposal Facilities.**

A sewage disposal facility, legal in its inception, is not a nuisance per se, and its location and the manner of its operation will determine whether it is a nuisance in fact. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

In proceedings for injunction against lagoon-type sewage disposal plant, evidence was insufficient to show that the lagoons, if constructed as proposed, would be located or operated so as to constitute a nuisance. *Larsen v. Village of Lava Hot Springs*, 88 Idaho 64, 396 P.2d 471 (1964).

### **Softball Field Lights.**

A church softball field lighted by high-intensity lights was not a nuisance where use was restricted to the hours between 7:00 a.m. and 10:00 p.m. *Corporation of the Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Ashton*, 92 Idaho 571, 448 P.2d 185 (1968).

### **Streets and Sidewalks.**

It is not every obstruction in a street or highway that constitutes a “nuisance per se,” since the right of the public to the free and unobstructed use of a street or way is subject to reasonable and necessary limitations, and to such incidental, temporary, or partial obstructions as manifest necessity may require. *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

A pedestrian, who was struck by a screen door which opened outwardly immediately in front of him when walking on a sidewalk in the business district of the city, could not recover for his injury from the owner and tenant of the building, since the maintenance and use of the screen door did not, in and of itself, constitute a substantial “obstruction” and was not a “nuisance per se.” *Rief v. Mountain States Tel. & Tel. Co.*, 63 Idaho 418, 120 P.2d 823 (1942).

The maintenance of a street with its terminus upon the bank of a river with a barrier erected thereat was not a nuisance for there was no defect which obstructed free passage or use of the street in the customary manner. *Smith v. Sharp*, 82 Idaho 420, 354 P.2d 172 (1960).

### **Tourist Court Encroachments.**



Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

### **Trees.**

Where defendant's predecessors in interest planted on the common boundary two poplar trees which have now matured to four or five feet in diameter at the base and thereafter plaintiff built approximately six feet from the boundary line and such mature trees now extend over and onto the building, one of the trees pushing to and against the foundation of plaintiff's house and exerting sufficient pressure against the basement to crack and push the wall of the house inward, also damaging the surface, the court authorized, upon the plaintiff bringing this action on the ground that the condition constituted a nuisance, the destruction of one tree but the other tree being healthy and not damaging the foundation and walls of the house it would not be necessary to be removed. *Lemon v. Curington*, 78 Idaho 522, 306 P.2d 1091 (1957).

### **Unsightly Buildings.**

Fact that building is unsightly or out of harmony in construction with adjoining buildings, and therefore not pleasing to sight, does not make it offensive to the senses within meaning of this section. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

### **Warehouses.**

Warehouse and platform obstructing city street was a public nuisance, even though city had allowed construction of same pursuant to a motion passed by city council and permit duly issued. *Boise City v. Sinsel*, 72 Idaho 329, 241 P.2d 173 (1952).

### **What Constitutes Nuisance.**

Former statutes regarding nuisances meant something more than the usual, ordinary and lawful use of one's own property in order to constitute

an act or acts a nuisance within the definitions they contain. *Bellevue v. Daly*, 14 Idaho 545, 94 P. 1036 (1908).

In order to create nuisance it is not enough that it diminish value of surrounding property, or reduce rental value. It must be such tangible injury as renders enjoyment of property essentially uncomfortable or inconvenient. *White v. Bernhart*, 41 Idaho 665, 241 P. 367 (1925).

Former similar section includes that which is a nuisance at all times and under all circumstances, and that which is not inherently a nuisance, or one per se, but which may become such by reason of surrounding circumstances, or the manner in which conducted. *Rowe v. city of Pocatello*, 70 Idaho 343, 218 P.2d 695 (1950).

## RESEARCH REFERENCES

**ALR.** — Keeping pigs as a nuisance. 2 A.L.R.3d 931.

Keeping poultry as nuisance. 2 A.L.R.3d 965.

Motor bus or truck terminal as nuisance. 2 A.L.R.3d 1372.

Electric generating plant or transformer station as nuisance. 4 A.L.R.3d 902.

Saloons or taverns as nuisance. 5 A.L.R.3d 989.

Keeping of dogs as enjoined nuisance. 11 A.L.R.3d 1399.

Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoined nuisance. 21 A.L.R.3d 1058.

Gun club, or shooting gallery or range, as nuisance. 26 A.L.R.3d 661.

Keeping horses as nuisance. 27 A.L.R.3d 627.

Punitive damages in actions based on nuisance. 31 A.L.R.3d 1346.

Children's playground as nuisance. 32 A.L.R.3d 1127.

Billboards and other outdoor advertising signs as civil nuisance. 38 A.L.R.3d 647.

Modern status of rules as to balance of convenience or social utility as affecting relief for nuisance. 40 A.L.R.3d 601.

Operation of incinerator as nuisance. [41 A.L.R.3d 1009](#).

Laundry or dry cleaning establishment as nuisance. [41 A.L.R.3d 1236](#).

Automobile racetrack or drag strip as nuisance. [41 A.L.R.3d 1273](#).

Public swimming pool as nuisance. [49 A.L.R.3d 652](#).

Gasoline or other fuel storage tanks as nuisance. [50 A.L.R.3d 209](#).

Exhibition of obscene motion pictures as nuisance. [50 A.L.R.3d 969](#).

Right of one compelled to discontinue business or activity constituting nuisance to indemnity from successful plaintiff. [53 A.L.R.3d 873](#).

Zoo as nuisance. [58 A.L.R.3d 1126](#).

Porno shops or similar places disseminating obscene materials as nuisance. [58 A.L.R.3d 1134](#).

Interference with radio or television reception as nuisance. [58 A.L.R.3d 1142](#).

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. [60 A.L.R.3d 665](#).

Airport operations or flight of aircraft as nuisance. [79 A.L.R.3d 253](#).

Existence of, and relief from, nuisance created by operation of air conditioning or ventilating equipment. [79 A.L.R.3d 320](#).

Fence as nuisance. [80 A.L.R.3d 962](#).

Massage parlor as nuisance. [80 A.L.R.3d 1020](#).

Operation of cement plant as nuisance. [82 A.L.R.3d 1004](#).

Carwash as nuisance. [4 A.L.R.4th 1308](#).

Funeral home as private nuisance. [8 A.L.R.4th 324](#).

Liability for wrongful autopsy. [18 A.L.R.4th 858](#).

Tort immunity of nongovernmental charities — Modern status. [25 A.L.R.4th 517](#).

Tower or antenna as constituting nuisance. [88 A.L.R.5th 641](#).

Keeping of domestic animal as constituting public or private nuisance. 90 A.L.R.5th 619.

Sewage treatment plant as constituting nuisance. 92 A.L.R.5th 517.

Nudity as constituting nuisance. 92 A.L.R.5th 593.

Hog breeding, confining, or processing facility as constituting nuisance. 93 A.L.R.5th 621.

Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.

Vibrations not accompanied by blasting or explosion as constituting nuisance. 103 A.L.R.5th 157.

**§ 52-102. Public nuisance.** — A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

**History.**

I.C., § 52-102, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Cross References.**

Dilapidated buildings in cities or villages, § 50-335.

Maintenance of a public nuisance, a misdemeanor, § 18-5903.

**Prior Laws.**

Former § 52-102 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

**Cited** *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).

Decisions Under Prior Law

Gambling machines and devices.

Tourist court encroachments.

Warehouses.

**Gambling Machines and Devices.**

Operation of gambling machines and devices constitutes a moral public nuisance. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

**Tourist Court Encroachments.**

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

### **Warehouses.**

Warehouse and platform obstructing city street was a public nuisance, even though city had allowed construction of same pursuant to a motion passed by city council and permit duly issued. *Boise City v. Sinsel*, 72 Idaho 329, 241 P.2d 173 (1952).

**§ 52-103. Moral nuisances — Definitions.** — As used in title 52, Idaho Code, relating to moral nuisances.

(A) “Knowledge” or “knowledge of such nuisance” means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.

(B) “Lewd matter” is synonymous with “obscene matter” and means any matter: (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and (2) which depicts or describes patently offensive representations or descriptions of: (a) ultimate sexual acts, normal or perverted, actual or simulated; or (b) masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value.

(C) “Lewdness” shall have and include all those meanings which are assigned to it under the common law.

(D) “Matter” means a motion picture film or a publication or both.

(E) “Moral Nuisance” means a nuisance which is injurious to public morals.

(F) “Motion picture film” shall include any:

(1) film or plate negative;

(2) film or plate positive;

(3) film designed to be projected on a screen for exhibition; (4) films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.[:]

(5) video tape or any other medium used to electronically reproduce images on a screen.

(G) “Person” means any individual, partnership, firm, association, corporation, or other legal entity.

(H) “Place” includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(I) “Publication” shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(J) “Sale” means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

### **History.**

I.C., § 52-103, as added by 1976, ch. 82, § 2, p. 270.

## **STATUTORY NOTES**

### **Cross References.**

Abatement of moral nuisances, § 52-401 et seq.

Health officers to cooperate in suppression of prostitution, § 39-603.

Liquor nuisances, § 23-701 et seq.

### **Prior Laws.**

Former § 52-103 was repealed. See Prior Laws, § 52-101.

### **Compiler’s Notes.**

The bracketed semicolon at the end of paragraph (F)(4) was inserted by the compiler to correct the enacting legislation.

## **CASE NOTES**

**Cited** *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).



**§ 52-104. Moral nuisances — Types.** — The following are declared to be moral nuisances:

(A) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition; (B) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition; (C) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section; (D) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade; (E) Any and every lewd publication possessed at a place which is a moral nuisance under this section; and (F) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur.

**History.**

I.C., § 52-104, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-104 was repealed. See Prior Laws, § 52-101.

**§ 52-105. Moral nuisances — Personal property — Knowledge of nuisance.** — The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(A) All monies paid as admission price to the exhibition of any lewd film found to be a moral nuisance.

(B) All valuable consideration received for the sale of any lewd publication which is found to be a moral nuisance.

(C) The furniture and movable contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in [section 52-405, Idaho Code](#), upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the acts, conditions or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding.

**History.**

[I.C., § 52-105](#), as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-105 was repealed. See Prior Laws, § 52-101.

**§ 52-106. Moral nuisances — Building where gambling is carried on.**

— Any building, place, or the ground itself, wherein or whereon gambling or any game of chance for money, checks, credit or other representatives of value is carried on or takes place, or gambling paraphernalia is kept, or any notice, sign or device advertising or indicating the existence or presence of such gambling or any game of chance is displayed or exposed to view, is declared a moral nuisance and shall be enjoined and abated as provided by law.

**History.**

I.C., § 52-106, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Cross References.**

Abatement of moral nuisances, § 52-401 et seq.

**Prior Laws.**

Former § 52-106 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

**Cited** Rossi v. United States, 49 F.2d 1 (9th Cir. 1931).

Decisions Under Prior Law Gambling Machines and Devices.

Operation of gambling machines and devices constitutes a moral public nuisance. State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328 (1953).

**§ 52-107. Private nuisance.** — Every nuisance not defined by law as a public nuisance or a moral nuisance, is private.

**History.**

I.C., § 52-107, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Cross References.**

Private nuisances in general, § 52-301.

**Prior Laws.**

Former § 52-107 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

**Unsightly Structures.**

Property owners do not have the right to prohibit, upon adjoining land, the erection of structures that they did not find to be aesthetically pleasing, unless the structure has no useful purpose and was erected only to injure them. *McVicars v. Christensen*, 156 Idaho 58, 320 P.3d 948 (2014).

**§ 52-108. When not a nuisance.** — Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

**History.**

I.C., § 52-108, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-108 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

**Express Authority.**

This section only exempts a party from a nuisance action when the activity is done under the express authority of a statute; where, in a nuisance action by the state against current mine owners for water pollution, although the defendants were in compliance with rules and regulations of the department of health and welfare, the defendants had not established that their activities, or historical mining activities of prior owners, were done or maintained under the express authority of a statute, a material question of fact existed, precluding summary judgment. *Idaho v. Hanna Mining Co.*, 699 F. Supp. 827 (D. Idaho 1987), aff'd, 882 F.2d 392 (9th Cir. 1989).

**Decisions Under Prior Law**

Application.

Channel of natural streams, using.

Fluctuating river flow.

Section applied.

**Application.**

This section refers only to statutes, but if this section were applicable to a permit granted by a city, not even an ordinance, it did not authorize an unlawful, wrongful or negligent act, and afforded no defense to the city. *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

### **Channel of Natural Streams, Using.**

The current of a river cannot be appropriated by a riparian proprietor in Idaho, even assuming the possible persistence in that state of the doctrine of riparian rights, in view of statutes declaring the right of appropriators of water for irrigation or other lawful purpose to use the channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

Where defendant built a series of dams that increased the flow of a river to such extent that plaintiff's access to his farm land, which was across the river from his place of residence and which situation made it necessary for plaintiff to ford the river in order to reach his farm land, was obstructed and plaintiff sought to recover damages on the theory that the dams constituted a nuisance, court held that, by statute, defendant and other appropriators of water for lawful purposes had right to use channel of natural streams for carrying stored water or water diverted from other streams. *Johnson v. Utah Power & Light Co.*, 215 F.2d 814 (9th Cir. 1954).

### **Fluctuating River Flow.**

An easement which granted a power company the right to fluctuate the flow of a river would be construed as granting something in addition to the right of the power company to fill completely the natural channel of the river, since the power company had the latter right without the aid of an easement. *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir. 1955).

### **Section Applied.**

A ditch or canal constructed and maintained under express authority of statute cannot be deemed a nuisance. *MacCammelly v. Pioneer Irrigation Dist.*, 17 Idaho 415, 105 P. 1076 (1909); *Boise City v. Boise City Canal Co.*, 19 Idaho 717, 115 P. 505 (1911); *City of Twin Falls v. Harlan*, 27 Idaho 769, 151 P. 1191 (1915).

Cellar-way and doors in sidewalk maintained by authority of law cannot be deemed a nuisance. *Lewiston v. Isaman*, 19 Idaho 653, 115 P. 494 (1911).

Running of licensed saloon in regular and lawful manner was not a nuisance (decided when local option law was in effect). *Village of Am. Falls v. West*, 26 Idaho 301, 142 P. 42 (1914).

**§ 52-109. Liability of successive owners for continuing nuisance. —** Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

**History.**

I.C., § 52-109, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-109 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

Decisions Under Prior Law [Construction.](#)

[Tourist court.](#)

**[Construction.](#)**

The purchaser of property containing a nuisance may not defend an action for damages or abatement on the ground that he did not create it, but he is not liable for damages incurred previous to his purchase. [Brose v. Twin Falls Land & Water Co., 24 Idaho 266, 133 P. 673 \(1913\); Partridge v. Twin Falls Land & Water Co., 24 Idaho 275, 133 P. 677 \(1913\).](#)

**[Tourist Court.](#)**

Even though plaintiffs, purchasers, did not create the encroachments contained in the tourist site, they would be liable as successive owners of the property. [Galvin v. Appleby, 78 Idaho 457, 305 P.2d 309 \(1956\).](#)



**§ 52-110. Abatement does not preclude action.** — The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

**History.**

I.C., § 52-110, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-110 was repealed. See Prior Laws, § 52-101.

**§ 52-111. Actions for nuisance.** — Anything which is injurious to health or morals, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. In the case of a moral nuisance, the action may be brought by any resident citizen of the county; in all other cases the action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

**History.**

I.C., § 52-111, as added by 1976, ch. 82, § 2, p. 270.

**STATUTORY NOTES**

**Cross References.**

Abatement of moral nuisance, § 52-401 et seq.

Moral nuisance defined, § 52-103.

Nuisance defined, § 52-101.

Private person may sue for public nuisance specially injurious, § 52-206.

**Prior Laws.**

Former § 52-111 was repealed. See Prior Laws, § 52-101.

**CASE NOTES**

[Applicability.](#)

[Damages.](#)

[Injunctions.](#)

[Unsightly structures.](#)

[Applicability.](#)

Summary judgment in favor of the bar on the resident's negligence claim was proper because the resident failed to provide sufficient evidence to establish that the bar owed a duty to the resident or created a public nuisance under this section. The assault on the resident occurred outside of the bar, was by an unknown assailant, and was not foreseeable. *Jones v. Starnes*, 150 Idaho 257, 245 P.3d 1009 (2011).

### **Damages.**

Damages may be recovered in addition to an injunction or abatement, but are not a prerequisite to such equitable relief, and the failure to recover damages does not necessarily mean there can be no injunction or abatement, if that equitable relief is otherwise appropriate. *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

Even though landowners had prevailed in their claim for a nuisance caused by the neighbors' interference with their use of a driveway easement, the district court properly denied the landowners' monetary damages, where the nuisance had stopped, the driveway was no longer obstructed, and there was no diminished property value. *Benninger v. Derifield*, 142 Idaho 486, 129 P.3d 1235 (2006).

### **Injunctions.**

While a structure that is a nuisance in fact may be enjoined, injunctions are disfavored where the structure serves a useful purpose and the nuisance arises out of a legitimate business or activity's particular manner of operation. *McVicars v. Christensen*, 156 Idaho 58, 320 P.3d 948 (2014).

Where something constitutes a nuisance because of particular objectionable features associated with it, a court should not enjoin the entire activity, but rather should only attempt to eliminate the objectionable features. *McVicars v. Christensen*, 156 Idaho 58, 320 P.3d 948 (2014).

### **Unsightly Structures.**

Property owners do not have the right to prohibit, upon adjoining land, the erection of structures that they did not find to be aesthetically pleasing, unless the structure has no useful purpose and was erected only to injure them. *McVicars v. Christensen*, 156 Idaho 58, 320 P.3d 948 (2014).

**Cited** *Carpenter v. Double R Cattle Co.*, 105 Idaho 320, 669 P.2d 643 (Ct. App. 1983).

### Decisions Under Prior Law

Instructions.

Special injury.

Trees causing damage.

#### **Instructions.**

The giving of instructions to the jury on issue of nuisance was not erroneous as raising an issue not pleaded in the complaint where the complaint charged the defendant with acts and conditions which would constitute a nuisance under this section. *Archer v. Shields Lumber Co.*, 91 Idaho 861, 434 P.2d 79 (1967).

#### **Special Injury.**

This section does not change the general rule that a private party to maintain an action to abate a public nuisance must show special injury to himself. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

#### **Trees Causing Damage.**

Where defendant's predecessors in interest planted on the common boundary two poplar trees which have now matured to four or five feet in diameter at the base and thereafter plaintiff built approximately six feet from the boundary line and such mature trees now extend over and onto the building, one of the trees pushing to and against the foundation of plaintiff's house and exerting sufficient pressure against the basement to crack and push the wall of the house inward also damaging the surface, the court authorized, upon the plaintiff bringing this action on the ground that the condition constituted a nuisance, the destruction of one tree but the other tree being healthy and not damaging the foundation and walls of the house it would not be necessary to be removed. *Lemon v. Curington*, 78 Idaho 522, 306 P.2d 1091 (1957).

### **RESEARCH REFERENCES**

**ALR.** — Remedies for sewage treatment plant alleged or deemed to be nuisance. 101 A.L.R.5th 287.



## Chapter 2

# PUBLIC NUISANCES

Sec.

52-201. Not legalized by prescription.

52-202. Remedies.

52-203. Indictment or information.

52-204. Action by private person.

52-205. Abatement by public body or officer.

52-206. Abatement by private person.

**§ 52-201. Not legalized by prescription.** — No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

**History.**

R.S., § 3630; reen. R.C. & C.L., § 3662; C.S., § 6430; I.C.A., § 51-201.

**STATUTORY NOTES**

**Cross References.**

Public nuisance defined, § 52-102.

**CASE NOTES**

**Prescriptive Right Not Acquired.**

No lapse of time can give a prescriptive right to maintain a nuisance. *Lewiston v. Booth*, 3 Idaho 692, 34 P. 809 (1893).



**§ 52-202. Remedies.** — The remedies against a public nuisance are:

1. Indictment or information; 2. A civil action; or, 3. Abatement.

**History.**

R.S., § 3631; compiled R.C. & C.L., § 3663; C.S., § 6431; I.C.A., § 51-202.

## CASE NOTES

**Abatement.**

This section makes no distinction as to the remedy to abate nuisances which are a crime per se and those which are not such a crime. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

**§ 52-203. Indictment or information.** — The remedy by indictment or information is regulated by the Penal Code.

**History.**

R.S., § 3632; reen. R.C. & C.L., § 3664; C.S., § 6432; I.C.A., § 51-203.

**STATUTORY NOTES**

**Cross References.**

Penalty for maintenance of public nuisance, § 18-5903.

**Compiler's Notes.**

The reference to the “Penal Code” at the end of the section is a reference to an archaic division of the Idaho Code, now codified as titles 18 through 20, Idaho Code.

**§ 52-204. Action by private person.** — A private person may maintain an action:

1. For a moral nuisance, if he be a resident citizen of the county, whether the nuisance complained of is specially injurious to him or not.
2. For any other public nuisance, if it is specially injurious to himself.

**History.**

R.S., § 3633; reen. R.C., § 3665; am. 1915, ch. 43, § 4, p. 125; reen. C.L., § 3665; C.S., § 6433; I.C.A., § 51-204.

**CASE NOTES**

Pleading.

Private actions.

Res judicata.

Suing in name of state.

**Pleading.**

Private person who sues to abate public nuisance must allege by positive averment in his complaint sufficient facts to show special injury to himself. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

**Private Actions.**

Private person may sue to abate or restrain continuance of public nuisance, provided he alleges and shows that such nuisance is especially injurious to himself. Thus, a person whose property is rendered undesirable as a residence and thereby depreciated in value because of the maintenance of a house of prostitution in the neighborhood may sue to enjoin the continued maintenance of the same as a nuisance. *Redway v. Moore*, 3 Idaho 312, 29 P. 104 (1892).

A private person who is especially injured by the maintenance of obstructions in a navigable river may sue to abate the same. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

A reasonable obstruction in a navigable stream, which merely impairs navigation but does not destroy it, cannot be enjoined at the suit of a private person. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

To authorize a private person to bring an action to abate a public nuisance, the plaintiff must allege and show that he will be specially injured in a different way from the public generally or deprived of the free use of his own private property. *Stricker v. Hillis*, 15 Idaho 709, 99 P. 831 (1909).

To have suffered in a different manner or extent than the public at large is to have received a special and peculiar damage for which a recovery may be had. *Stricker v. Hillis*, 17 Idaho 646, 106 P. 1128 (1910).

Where the construction of a fish farm in an estuary deprived a riparian landowner of ingress and egress to her property via the estuary, she was entitled to bring an action for abatement of the nuisance. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

### **Res Judicata.**

Trial and acquittal of a party charged in criminal proceedings with construction of a nuisance in a navigable stream is not a bar to civil action to enjoin nuisance. *Small v. Harrington*, 10 Idaho 499, 79 P. 461 (1904).

### **Suing in Name of State.**

Citizens of county are entitled to maintain action in name of state to enjoin operation of gambling machines and devices on the ground that operation of same constituted a lottery. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

**§ 52-205. Abatement by public body or officer.** — A public nuisance may be abated by any public body or officer authorized thereto by law.

**History.**

R.S., § 3634; reen. R.C. & C.L., § 3666; C.S., § 6434; I.C.A., § 51-205.

**STATUTORY NOTES**

**Cross References.**

Liquor nuisance, abatement, § 23-705.

**CASE NOTES**

Road overseer.

Tourist court.

**Road Overseer.**

Road overseer is the proper party to bring action to abate a nuisance when such nuisance consists of obstruction to public highway within his district. *Meservey v. Gulliford*, 14 Idaho 133, 93 P. 780 (1908).

**Tourist Court.**

Sellers' contention that purchasers were not bound to remove encroachments of tourist site and equipment sold to them upon demand by the city inasmuch as the city has permitted the existence of such encroachments for a considerable time was not well taken, and it became the duty of the purchasers to remove such encroachments, as failure to do so would result in both civil and criminal liability. Such encroachments were a public nuisance and subject to abatement. *Galvin v. Appleby*, 78 Idaho 457, 305 P.2d 309 (1956).

**§ 52-206. Abatement by private person.** — Any person may abate a public nuisance which is specially injurious to him, by removing, or if necessary, destroying, the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

**History.**

R.S., § 3635; reen. R.C. & C.L., § 3667; C.S., § 6435; I.C.A., § 51-206.



## Chapter 3

### PRIVATE NUISANCES

Sec.

52-301. Remedies for private nuisances.

52-302. Abatement — When allowed.

52-303. Abatement — When notice is required.



**§ 52-301. Remedies for private nuisances.** — The remedies against a private nuisance are:

1. A civil action; or, 2. Abatement.

**History.**

R.S., § 3640; reen. R.C. & C.L., § 3668; C.S., § 6436; I.C.A., § 51-301.

**STATUTORY NOTES**

**Cross References.**

Actions for nuisance, § 52-111.

Private nuisance defined, § 52-107.

**RESEARCH REFERENCES**

**ALR.** — Putative damages in actions based on nuisance. 31 A.L.R.3d 1346.

“Coming to nuisance” as a defense or estoppel. 42 A.L.R.3d 344.

Interference with radio or television reception as nuisance. 58 A.L.R.3d 1142.

Casting of light on another’s premises as constituting nuisance. 79 A.L.R.3d 253.

**§ 52-302. Abatement — When allowed.** — A person injured by a private nuisance may abate it by removing, or, if necessary, destroying, the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

**History.**

R.S., § 3641; reen. R.C. & C.L., § 3669; C.S., § 6437; I.C.A., § 51-302.

**CASE NOTES**

Obstruction of estuary.

Obstruction of nonnavigable streams.

**Obstruction of Estuary.**

Where the construction of a fish farm in an estuary deprived a riparian landowner of the right of ingress to and egress from her property via the estuary, she was entitled to bring an action for abatement of the nuisance. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

**Obstruction of Nonnavigable Streams.**

Obstruction of stream which prevents ordinary flow of water for formerly appropriated irrigation purposes is nuisance and may be abated. *Carey Lake Reservoir Co. v. Strunk*, 39 Idaho 332, 227 P. 591 (1924).

Defendant upstream owner, a junior appropriator of water rights, had no right to damages from plaintiffs, a downstream owner, a prior appropriator, and users of water in his ditch, for removal of dam which was constructed by upstream owner, since the dam constituted a private nuisance and it was plaintiffs' right to abate it. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Where plaintiff was entitled to water, and dam constituted private nuisance, it was plaintiff's right to abate it and defendant was not entitled to damages resulting from removal of the obstruction by plaintiffs. The equipment plaintiffs took to the site crossed over sagebrush land causing no injury and they had a right to reasonable access to the channel to secure and

safeguard their water right. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

**§ 52-303. Abatement — When notice is required.** — Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

**History.**

R.S., § 3642; reen. R.C. & C.L., § 3670; C.S., § 6438; I.C.A., § 51-303.



## Chapter 4

# MORAL NUISANCES — ACTIONS FOR INJUNCTION AND ABATEMENT

Sec.

52-401. Cumulative remedy.

52-402. Who may maintain action.

52-403. Pleadings — Jurisdiction — Venue — Application for temporary injunction.

52-404. Order restraining removal of personal property from premises — Service — Punishment.

52-405. Notice of hearing on temporary injunction — Consolidation.

52-406. Right to possession of real property and personal property after hearing on the temporary injunction — Conditions for avoidance of temporary forfeiture.

52-407. Right to possession of real property and personal property after finding of public nuisance — Conditions for reentry and repossession.

52-408. Priority of action.

52-409. Evidence.

52-410. Evidence of reputation admissible.

52-411. Costs.

52-412. Content of final judgment and order.

52-413. Court shall punish offender for violation of injunction or order.

52-414. Lease void if building used for lewd purposes.

52-415. Civil penalty — Forfeiture — Accounting — Lien as to expenses of abatement.

52-416. Immunity.

52-417. Severability.

**§ 52-401. Cumulative remedy.** — In addition to any other remedy provided by law, any act, occupation, structure or thing which is a moral nuisance, may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing may be enjoined, as in this chapter provided.

### **History.**

I.C., § 52-401, as added by 1976, ch. 82, § 4, p. 270.

## **STATUTORY NOTES**

### **Cross References.**

Indecency and obscenity, § 18-4101 et seq.

Moral nuisance defined, § 52-103.

Prostitution, § 18-5601 et seq.

Suppression of prostitution under health laws, § 39-603.

### **Prior Laws.**

A former chapter 4 of title 52, which comprised R.C., §§ 4628a-4628j, as added by 1915, ch. 43, § 6, p. 125; reen. C.L., §§ 4628a-4628j; C.S., §§ 7042-7051; I.C.A., §§ 51-401 — 51-410, was repealed by S.L. 1976, ch. 82, § 3.

## **CASE NOTES**

**Cited** *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981); *United States Mktg., Inc. v. Leroy*, 524 F. Supp. 1277 (D. Idaho 1981).

Decisions Under Prior Law Constitutionality.

Similar act relating to intoxicating liquors was held constitutional. *State v. Kasiska*, 27 Idaho 548, 150 P. 17 (1915).

## **RESEARCH REFERENCES**

**ALR.** — Exhibition of obscene motion picture as nuisance. 50 A.L.R.3d 969.

Porno shops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Massage parlor as nuisance. 80 A.L.R.3d 1020.



**§ 52-402. Who may maintain action.** — The attorney general, prosecuting attorney, or any private resident citizen of the county may maintain an action of an equitable nature, as relator, in the name of the state of Idaho, to abate a moral nuisance, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars (\$500), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the restraining order or temporary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney or the attorney general, and no action shall be maintained against the public official for his official action when brought in good faith.

**History.**

I.C., § 52-402, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

Private person may maintain action, §§ 52-111, 52-204.

**Prior Laws.**

Former § 52-402 was repealed. See Prior Laws, § 52-401.

**CASE NOTES**

### Decisions Under Prior Law Citizens of County.

Citizens of county are entitled to maintain action in name of state to enjoin operation of gambling machines and devices on the ground that operation of same constituted a lottery. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

**§ 52-403. Pleadings — Jurisdiction — Venue — Application for temporary injunction.** — The action, provided for in this chapter, shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten (10) days after the filing.

**History.**

I.C., § 52-403, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-403 was repealed. See Prior Laws, § 52-401.

**§ 52-404. Order restraining removal of personal property from premises — Service — Punishment.** — Where such application for a temporary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that, pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions thereafter may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect.

**History.**

I.C., § 52-404, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Cross References.**

Contempt of court, § 7-601 et seq.

**Prior Laws.**

Former § 52-404 was repealed. See Prior Laws, § 52-401.

**§ 52-405. Notice of hearing on temporary injunction — Consolidation.** — A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least five (5) days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in section 52-404, Idaho Code, in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible upon the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits.

**History.**

I.C., § 52-405, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-405 was repealed. See Prior Laws, § 52-401.

**§ 52-406. Right to possession of real property and personal property after hearing on the temporary injunction — Conditions for avoidance of temporary forfeiture.** — If upon hearing, the allegations of the complaint are sustained by clear and convincing evidence that a moral nuisance exists and is likely to continue in the absence of injunctive relief, the court shall issue a temporary injunction, without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control, or in charge of the nuisance so enjoined had received five (5) days' notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein and shall forthwith issue an order closing such place against its use for any purpose until final decision is rendered on the application for a permanent injunction, unless: (1) the nuisance complained of has been abated by such person, or (2) the owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by [section 52-414, Idaho Code](#).

Such order shall also continue in effect for such further period the order, authorized in [section 52-404, Idaho Code](#), restraining the removal of personal property or, if not so issued, shall include such an order restraining for such period the removal or interference with the personal property and contents located therein. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in [section 52-404, Idaho Code](#).

Such order shall also require such persons to show cause within thirty (30) days why such closing order should not be made permanent, as provided for in [section 52-412, Idaho Code](#).

### **History.**

[I.C., § 52-406](#), as added by 1976, ch. 82, § 4, p. 270; am. 1982, ch. 271, § 1, p. 702.

## **STATUTORY NOTES**

## **Prior Laws.**

Former § 52-406 was repealed. See Prior Laws, § 52-401.

## **CASE NOTES**

No prior restraint.

Purpose.

### **No Prior Restraint.**

Where the state filed suit against two adult bookstores asking injunctive relief abating the alleged nuisance and for forfeiture of the use of the real property in question, the one-year closure or forfeiture order did not by itself constitute an unlawful prior restraint upon the exercise of free speech; such finding was based upon (1) the extensive power of the state to impose a forfeiture on neutral and innocent property used in the commission of forbidden acts, (2) the power of the state to impose sanctions of its choice upon those who disseminate unprotected obscenity, (3) the fact that the forfeiture or closure order was not directed at any speech or publication, but was instead aimed at the real property apart from the content of expression contained therein, and (4) the fact that the defendants remained free to disseminate any materials, except those already determined to be obscene, at any other location, subject to further penal actions by the state should the defendants again violate laws regulating obscenity. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

### **Purpose.**

The manifest purpose of Idaho's one-year closing provision is not to prevent future expression, but to punish past illegal conduct by depriving the violator of economic gain; this is a permissible state objective implemented by permissible means. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

**§ 52-407. Right to possession of real property and personal property after finding of public nuisance — Conditions for reentry and repossession.** — The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear between the filing of the complaint and the hearing on the application for a permanent injunction, and upon payment of all cost incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, until the decision of the court is rendered on the application for a permanent injunction, then the court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall discharge said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property, under this section, shall not release it from any judgment, lien, penalty, or liability to which it may be subjected.

**History.**

I.C., § 52-407, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-407 was repealed. See Prior Laws, § 52-401.



**§ 52-408. Priority of action.** — The action provided for in this chapter shall be set down for trial within ninety (90) days and shall have precedence over all other cases except crimes, election contests, or injunctions.

**History.**

I.C., § 52-408, as added by 1976, ch. 82, § 4, p. 270; am. 1982, ch. 271, § 2, p. 702.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-408 was repealed. See Prior Laws, § 52-401.

**§ 52-409. Evidence.** — In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place, is admissible for the purpose of proving the existence of said nuisance, and is prima facie evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

**History.**

I.C., § 52-409, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-409 was repealed. See Prior Laws, § 52-401.

**§ 52-410. Evidence of reputation admissible.** — At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance.

**History.**

I.C., § 52-410, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Prior Laws.**

Former § 52-410 was repealed. See Prior Laws, § 52-401.

**§ 52-411. Costs.** — If the action is brought by a private person and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed for that reason before trial, or if the action is dismissed for want of prosecution, the costs may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere, and the entire expenses of such abatement, including attorney's fees, shall be recoverable by plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a private person, it shall not be voluntarily dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one (1) term of court, any person who is a citizen of the county, or has an office therein, or the attorney general or the prosecuting attorney, may be substituted for the complainant and prosecute said action to judgment.

### **History.**

I.C., § 52-411, as added by 1976, ch. 82, § 4, p. 270.

## **STATUTORY NOTES**

### **Cross References.**

Attorney general, § 67-1401 et seq.

**§ 52-412. Content of final judgment and order.** — If the existence of a nuisance is admitted or established in an action as provided for in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court, as provided for in sections 52-406 and 52-407, Idaho Code, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not be sold.

Such order shall also require the renewal for one (1) year of any bond furnished by the owner of the real property, as provided in [section 52-407, Idaho Code](#), or, if not so furnished, shall continue for one (1) year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose, and keeping it closed for a period of one (1) year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in [section 52-407, Idaho Code](#).

Owners of unsold personal property and contents so seized must appear and claim the same within ten (10) days after such order of abatement is made, and prove innocence, to the satisfaction of the court, of any knowledge of said use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.

### **History.**

[I.C., § 52-412](#), as added by 1976, ch. 82, § 4, p. 270.

## CASE NOTES

No prior restraint.

Purpose.

### No Prior Restraint.

Where the state filed a suit against two adult bookstores asking injunctive relief abating the alleged nuisance and for forfeiture of the use of the real property in question, the one-year closure or forfeiture order did not by itself constitute an unlawful prior restraint upon the exercise of free speech; such finding was based upon (1) the extensive power of the state to impose a forfeiture on neutral and innocent property used in the commission of forbidden acts, (2) the power of the state to impose sanctions of its choice upon those who disseminate unprotected obscenity, (3) the fact that the forfeiture or closure order was not directed at any speech or publication, but was instead aimed at the real property apart from the content of expression contained therein, and (4) the fact that the defendants remain free to disseminate any materials, except those already determined to be obscene, at any other location, subject to further penal actions by the state should the defendants again violate laws regulating obscenity. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

### Purpose.

The manifest purpose of Idaho's one-year closing provision is not to prevent future expression, but to punish past illegal conduct by depriving the violator of economic gain and this is a permissible state objective implemented by permissible means. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

**§ 52-413. Court shall punish offender for violation of injunction or order.** — In case of the violation of any injunction or closing order, granted under this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court may summarily try and punish the offender. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses.

**History.**

I.C., § 52-413, as added by 1976, ch. 82, § 4, p. 270.

**§ 52-414. Lease void if building used for lewd purposes.** — If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises.

**History.**

I.C., § 52-414, as added by 1976, ch. 82, § 4, p. 270.



**§ 52-415. Civil penalty — Forfeiture — Accounting — Lien as to expenses of abatement.** — Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in section 52-104, Idaho Code, and all monies and other considerations declared to be a moral nuisance under section 52-105, Idaho Code, are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405, Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

Upon judgment against the defendants in legal proceedings brought pursuant to this chapter, an accounting shall be made by such defendant or defendants of all monies received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all monies estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare, public health and public morals.

Where the action is brought pursuant to this chapter, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) investigative costs.
- (2) court costs.
- (3) reasonable attorney's fees arising out of the preparation for, and trial of the cause, and appeals therefrom, and other costs allowed on appeal.
- (4) printing costs of trial and appellate briefs, and all other papers filed in such proceedings.

**History.**

I.C., § 52-415, as added by 1976, ch. 82, § 4, p. 270.

## CASE NOTES

Award of costs.

Constitutionality.

### Award of Costs.

The portion of this section relating to recovery of abatement costs is clearly remedial in nature and should be liberally construed to effect its manifest objectives. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

In an action to abate two adult bookstores as moral nuisances, where the trial court awarded only nominal attorney fees to the state, on the ground that the state had failed to keep hourly time sheets, and denied the state all other abatement costs, such award was not in keeping with the legislative policy of this section and was insufficient. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

### Constitutionality.

This section, which awards abatement costs only to a prevailing plaintiff, does not violate the equal protection clause of the United States Constitution where the award furthers a legitimate governmental objective. *State ex rel. Kidwell v. United States Mktg., Inc.*, 102 Idaho 451, 631 P.2d 622 (1981), appeal dismissed, 455 U.S. 1009, 102 S. Ct. 1649, 71 L. Ed. 2d 878 (1982).

**Cited** *United States Mktg., Inc. v. Leroy*, 524 F. Supp. 1277 (D. Idaho 1981); *DeWils Interiors, Inc. v. Dines*, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984).

**§ 52-416. Immunity.** — The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (1) has no financial interest in the place wherein he is so employed, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this chapter, including pre-trial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters.

**History.**

I.C., § 52-416, as added by 1976, ch. 82, § 4, p. 270.

**§ 52-417. Severability.** — If any section, subsection, sentence, or clause of this act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this act. It is hereby declared that this act would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid.

**History.**

I.C., § 52-417, as added by 1976, ch. 82, § 4, p. 270.

**STATUTORY NOTES**

**Compiler's Notes.**

The term “this act” throughout this section refers to S.L. 1976, Chapter 82, which is compiled as §§ 52-101 to 52-111 and 52-401 to 52-417.

**Title 53**  
**PARTNERSHIP**

Chapter

[Chapter 1. Special Partnership. \[Repealed.\]](#)

[Chapter 2. Uniform Limited Partnership Act. \[Repealed.\]](#)

[Chapter 3. Uniform Partnership Act. \[Repealed.\]](#)

[Chapter 4. Mining Partnership, §§ 53-401 — 53-412.](#)

[Chapter 5. Assumed Business Names. \[Repealed.\]](#)

[Chapter 6. Idaho Limited Liability Company Act. \[Repealed.\]](#)

[Chapter 7. Uniform Unincorporated Nonprofit Association Act. \[Repealed.\]](#)



## Chapter 1

### SPECIAL PARTNERSHIP

Sec.

53-101 — 53-125. [Repealed.]

**§ 53-101 — 53-125. Special partnerships. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised (1885, p. 148, §§ 1-25; R.S., §§ 3270-3294; reen. R.C. & C.L., §§ 3336-3360; C.S., §§ 5757-5781; I.C.A., §§ 52-101 — 52-125) were repealed by S.L. 1982, ch. 106, § 1.





## Chapter 2

# UNIFORM LIMITED PARTNERSHIP ACT

### Part 1. General Provisions

Sec.

53-2-101 — 53-2-118. [Repealed.]

### Part 2. Formation — Certificate of Limited Partnership and Other Filings

53-2-201 — 53-2-210. [Repealed.]

### Part 3. Limited Partners

53-2-301 — 53-2-306. [Repealed.]

### Part 4. General Partners

53-2-401 — 53-3-408. [Repealed.]

### Part 5. Contributions and Distributions

53-2-501 — 53-2-509. [Repealed.]

### Part 6. Dissociation

53-2-601 — 53-2-607. [Repealed.]

### Part 7. Transferable Interests and Rights of Transferees and Creditors

53-2-701 — 53-2-704. [Repealed.]

### Part 8. Dissolution

53-2-801 — 53-2-812. [Repealed.]

### Part 9. Foreign Limited Partnerships

53-2-901 — 53-2-908. [Repealed.]

Part 10. Actions By Partners

53-2-1001 — 53-2-1005. [Repealed.]

Part 11. Conversion and Merger

53-2-1100 — 53-2-1113. [Repealed.]

Part 12. Miscellaneous Provisions

53-2-1201 — 53-2-1205. [Repealed.]



## Part 1

### General Provisions

« Title 53 •, « Ch. 2 », • Pt. 1 », • § 53-2-101 •

Idaho Code § 53-2-101

#### § 53-2-101 — 53-2-118. [Repealed.]

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-101 et seq.

### STATUTORY NOTES

#### **Prior Laws.**

Section 1 of S.L. 2006, ch. 144, repealed former Chapter 2, Limited Partnerships, which consisted of §§ 53-201 — 53-268, and § 2 of S.L. 2006, ch. 144 enacted a new Chapter 2, Uniform Limited Partnerships Act.

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 1, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-101. Short title. [I.C., § 53-2-101, as added by 2006, ch. 144, § 2, p. 407.]

53-2-102. Definitions. [I.C., § 53-2-102, as added by 2006, ch. 144, § 2, p. 407.]

53-2-103. Knowledge and notice. [I.C., § 53-2-103, as added by 2006, ch. 144, § 2, p. 407.]

53-2-104. Nature, purpose and duration of entity. [I.C., § 53-2-104, as added by 2006, ch. 144, § 2, p. 407.]

53-2-105. Powers. [I.C., § 53-2-105, as added by 2006, ch. 144, § 2, p. 407.]

53-2-106. Governing law. [I.C., § 53-2-106, as added by 2006, ch. 144, § 2, p. 407.]

53-2-107. Supplemental principles of law — Rate of interest. [I.C., § 53-2-107, as added by 2006, ch. 144, § 2, p. 407.]

53-2-108. Name. [I.C., § 53-2-108, as added by 2006, ch. 144, § 2, p. 407; am. 2012, ch. 184, § 2, p. 487.]

53-2-109. Reservation of name. [I.C., § 53-2-109, as added by 2006, ch. 144, § 2, p. 407.]

53-2-110. Effect of partnership agreement — Nonwaivable provisions. [I.C., § 53-2-110, as added by 2006, ch. 144, § 2, p. 407.]

53-2-111. Required information. [I.C., § 53-2-111, as added by 2006, ch. 144, § 2, p. 407.]

53-2-112. Business transactions of partner with partnership. [I.C., § 53-2-112, as added by 2006, ch. 144, § 2, p. 407.]

53-2-113. Dual capacity. [I.C., § 53-2-113, as added by 2006, ch. 144, § 2, p. 407.]

53-2-114. Registered office and registered agent. [I.C., § 53-2-114, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L. 2007, ch. 314, § 46.]

53-2-115. Change of registered office or registered agent. [I.C., § 53-2-115, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L. 2007, ch. 314, § 46.]

53-2-116. Resignation of registered agent. [I.C., § 53-2-116, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L. 2007, ch. 314, § 46.]

53-2-117. Service of process. [I.C., § 53-2-117, as added by 2006, ch. 144, § 2, p. 407, was repealed by S.L. 2007, ch. 314, § 46.]

53-2-118. Consent and proxies of partners. [I.C., § 53-2-118, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 2**

### **Formation — Certificate of Limited Partnership and Other Filings**

« Title 53 •, « Ch. 2 », « Pt. 2 », • § 53-2-201 •

Idaho Code § 53-2-201

#### **§ 53-2-201 — 53-2-210. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-201 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 2, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-201. Formation of limited partnership — Certificate of limited partnership. [**I.C., § 53-2-201**, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 47, p. 887.]

53-2-202. Amendment or restatement of certificate. [**I.C., § 53-2-202**, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 48, p. 887.]

53-2-203. Statement of termination. [**I.C., § 53-2-203**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-204. Signing of records. [**I.C., § 53-2-204**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-205. Signing and filing pursuant to judicial order. [**I.C., § 53-2-205**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-206. Delivery to and filing of records by secretary of state — Effective time and date. [**I.C., § 53-2-206**, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 49, p. 887.]



53-2-207. Correcting filed record. [I.C., § 53-2-207, as added by 2006, ch. 144, § 2, p. 407.]

53-2-208. Liability for false information in filed record. [I.C., § 53-2-208, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 50, p. 887.]

53-2-209. Certificate of existence or authorization. [I.C., § 53-2-209, as added by 2006, ch. 144, § 2, p. 407.]

53-2-210. Annual report for secretary of state. [I.C., § 53-2-210, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 51, p. 887.]



## **Part 3**

### **Limited Partners**

« Title 53 •, « Ch. 2 », « Pt. 3 », • § 53-2-301 •

Idaho Code § 53-2-301

#### **§ 53-2-301 — 53-2-306. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-301 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 3, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-301. Becoming limited partner. [I.C., § 53-2-301, as added by 2006, ch. 144, § 2, p. 407.]

53-2-302. No right or power as limited partner to bind limited partnership. [I.C., § 53-2-302, as added by 2006, ch. 144, § 2, p. 407.]

53-2-303. No liability as limited partner for limited partnership obligations. [I.C., § 53-2-303, as added by 2006, ch. 144, § 2, p. 407.]

53-2-304. Right of limited partner and former limited partner to information. [I.C., § 53-2-304, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 52, p. 887.]

53-2-305. Limited duties of limited partners. [I.C., § 53-2-305, as added by 2006, ch. 144, § 2, p. 407.]

53-2-306. Person erroneously believing self to be limited partner. [I.C., § 53-2-306, as added by 2006, ch. 144, § 2, p. 407.]



## Part 4

### General Partners

« Title 53 •, « Ch. 2 », « Pt. 4 », • § 53-2-401 •

Idaho Code § 53-2-401

#### **§ 53-2-401 — 53-3-408. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-401 et seq.

### STATUTORY NOTES

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 4, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-401. Becoming general partner. [I.C., § 53-2-401, as added by 2006, ch. 144, § 2, p. 407.]

53-2-402. General partner agent of limited partnership. [I.C., § 53-2-402, as added by 2006, ch. 144, § 2, p. 407.]

53-2-403. Limited partnership liable for general partner's actionable conduct. [I.C., § 53-2-403, as added by 2006, ch. 144, § 2, p. 407.]

53-2-404. General partner's liability. [I.C., § 53-2-404, as added by 2006, ch. 144, § 2, p. 407.]

53-2-405. Actions by and against partnership and partners. [I.C., § 53-2-405, as added by 2006, ch. 144, § 2, p. 407.]

53-2-406. Management rights of general partner. [I.C., § 53-2-406, as added by 2006, ch. 144, § 2, p. 407.]

53-2-407. Right of general partner and former general partner to information. [I.C., § 53-2-407, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 53, p. 887.]

53-2-408. General standards of general partner's conduct. [I.C., § 53-2-408, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 5**

### **Contributions and Distributions**

« Title 53 •, « Ch. 2 », « Pt. 5 », • § 53-2-501 •

Idaho Code § 53-2-501

#### **§ 53-2-501 — 53-2-509. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-501 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 5, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-501. Form of contribution. [I.C., § 53-2-501, as added by 2006, ch. 144, § 2, p. 407.]

53-2-502. Liability for contribution. [I.C., § 53-2-502, as added by 2006, ch. 144, § 2, p. 407.]

53-2-503. Sharing of distributions. [I.C., § 53-2-503, as added by 2006, ch. 144, § 2, p. 407.]

53-2-504. Interim distributions. [I.C., § 53-2-504, as added by 2006, ch. 144, § 2, p. 407.]

53-2-505. No distribution on account of dissociation. [I.C., § 53-2-505, as added by 2006, ch. 144, § 2, p. 407.]

53-2-506. Distribution in kind. [I.C., § 53-2-506, as added by 2006, ch. 144, § 2, p. 407.]

53-2-507. Right to distribution. [I.C., § 53-2-507, as added by 2006, ch. 144, § 2, p. 407.]

53-2-508. Limitations on distribution. [I.C., § 53-2-508, as added by 2006, ch. 144, § 2, p. 407.]



53-2-509. Liability for improper distributions. [I.C., § 53-2-509, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 6**

### **Dissociation**

« Title 53 •, « Ch. 2 », « Pt. 6 », • § 53-2-601 •

Idaho Code § 53-2-601

#### **§ 53-2-601 — 53-2-607. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-601 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 6, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-601. Dissociation as limited partner. [I.C., § 53-2-601, as added by 2006, ch. 144, § 2, p. 407.]

53-2-602. Effect of dissociation as limited partner. [I.C., § 53-2-602, as added by 2006, ch. 144, § 2, p. 407.]

53-2-603. Dissociation as general partner. [I.C., § 53-2-603, as added by 2006, ch. 144, § 2, p. 407.]

53-2-604. Person's power to dissociate as general partner — Wrongful dissociation. [I.C., § 53-2-604, as added by 2006, ch. 144, § 2, p. 407.]

53-2-605. Effect of dissociation as general partner. [I.C., § 53-2-605, as added by 2006, ch. 144, § 2, p. 407.]

53-2-606. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. [I.C., § 53-2-606, as added by 2006, ch. 144, § 2, p. 407.]

53-2-607. Liability to other persons of person dissociated as general partner. [I.C., § 53-2-607, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 7**

### **Transferable Interests and Rights of Transferees and Creditors**

« Title 53 •, « Ch. 2 », « Pt. 7 », • § 53-2-701 •

Idaho Code § 53-2-701

#### **§ 53-2-701 — 53-2-704. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-701 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 7, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-701. Partner's transferable interest. [I.C., § 53-2-701, as added by 2006, ch. 144, § 2, p. 407.]

53-2-702. Transfer of partner's transferable interest. [I.C., § 53-2-702, as added by 2006, ch. 144, § 2, p. 407.]

53-2-703. Rights of creditor of partner or transferee. [I.C., § 53-2-703, as added by 2006, ch. 144, § 2, p. 407.]

53-2-704. Power of estate of deceased partner. [I.C., § 53-2-704, as added by 2006, ch. 144, § 2, p. 407.]



## Part 8 Dissolution

« Title 53 •, « Ch. 2 », « Pt. 8 », • § 53-2-801 •

Idaho Code § 53-2-801

### § 53-2-801 — 53-2-812. [Repealed.]

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-801 et seq.

## STATUTORY NOTES

### Compiler's Notes.

Title 53, Chapter 2, Part 8, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-801. Nonjudicial dissolution. [I.C., § 53-2-801, as added by 2006, ch. 144, § 2, p. 407.]

53-2-802. Judicial dissolution. [I.C., § 53-2-802, as added by 2006, ch. 144, § 2, p. 407.] Annotations 53-2-803. Winding up. [I.C., § 53-2-803, as added by 2006, ch. 144, § 2, p. 407.]

53-2-804. Power of general partner and person dissociated as general partner to bind partnership after dissolution. [I.C., § 53-2-804, as added by 2006, ch. 144, § 2, p. 407.]

53-2-805. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner. [I.C., § 53-2-805, as added by 2006, ch. 144, § 2, p. 407.]

53-2-806. Known claims against dissolved limited partnership. [I.C., § 53-2-806, as added by 2006, ch. 144, § 2, p. 407.]

53-2-807. Other claims against dissolved limited partnership. [I.C., § 53-2-807, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 54, p. 887.]

53-2-808. Liability of general partner and person dissociated as general partner when claim against limited partnership barred. [I.C., § 53-2-808, as added by 2006, ch. 144, § 2, p. 407.]

53-2-809. Administrative dissolution. [I.C., § 53-2-809, as added by 2006, ch. 144, § 2, p. 407.]

53-2-810. Reinstatement following administrative dissolution. [I.C., § 53-2-810, as added by 2006, ch. 144, § 2, p. 407.]

53-2-811. Appeal from denial of reinstatement. [I.C., § 53-2-811, as added by 2006, ch. 144, § 2, p. 407.]

53-2-812. Disposition of assets — When contributions required. [I.C., § 53-2-812, as added by 2006, ch. 144, § 2, p. 407.]





## Part 9

### Foreign Limited Partnerships

« Title 53 •, « Ch. 2 », « Pt. 9 », • § 53-2-901 •

Idaho Code § 53-2-901

#### **§ 53-2-901 — 53-2-908. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-21-501 et seq.

### STATUTORY NOTES

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 9, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-901. Governing law. [I.C., § 53-2-901, as added by 2006, ch. 144, § 2, p. 407.]

53-2-902. Application for certificate of authority. [I.C., § 53-2-902, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 55, p. 887.]

53-2-903. Activities not constituting transacting business. [I.C., § 53-2-903, as added by 2006, ch. 144, § 2, p. 407.]

53-2-904. Filing of certificate of authority. [I.C., § 53-2-904, as added by 2006, ch. 144, § 2, p. 407.]

53-2-905. Noncomplying name of foreign limited partnership. [I.C., § 53-2-905, as added by 2006, ch. 144, § 2, p. 407.]

53-2-906. Revocation of certificate of authority. [I.C., § 53-2-906, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 56, p. 887.]

53-2-907. Cancellation of certificate of authority - Effect of failure to have certificate. [I.C., § 53-2-907, as added by 2006, ch. 144, § 2, p. 407.]

53-2-908. Action by attorney general. [I.C., § 53-2-908, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 10**

### **Actions By Partners**

« Title 53 •, « Ch. 2 », « Pt. 10 », • § 53-2-1001 •

Idaho Code § 53-2-1001

#### **§ 53-2-1001 — 53-2-1005. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-24-901 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 10, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-1001. Direct action by partner. [I.C., § 53-2-1001, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1002. Derivative action. [I.C., § 53-2-1002, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1003. Proper plaintiff. [I.C., § 53-2-1003, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1004. Pleading. [I.C., § 53-2-1004, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1005. Proceeds and expenses. [I.C., § 53-2-1005, as added by 2006, ch. 144, § 2, p. 407.]



## **Part 11**

### **Conversion and Merger**

« Title 53 •, « Ch. 2 », « Pt. 11 », • § 53-2-1100 •

Idaho Code § 53-2-1100

#### **§ 53-2-1100 — 53-2-1113. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-22-201 et seq. and § 30-22-401 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 11, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-1100. Applicability of Idaho entity transactions act. [**I.C., § 53-2-1100**, as added by 2007, ch. 116, § 8, p. 333.]

53-2-1101. Definitions. [**I.C., § 53-2-1101**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1102. Conversion. [**I.C., § 53-2-1102**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1103. Action on plan of conversion by converting limited partnership. [**I.C., § 53-2-1103**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1104. Filings required for conversion — Effective date. [**I.C., § 53-2-1104**, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 57, p. 887.]

53-2-1105. Effect of conversion. [**I.C., § 53-2-1105**, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 58, p. 887.]

53-2-1106. Merger. [**I.C., § 53-2-1106**, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1107. Action on plan of merger by constituent limited partnership. [I.C., § 53-2-1107, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1108. Filings required for merger — Effective date. [I.C., § 53-2-1108, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 59, p. 887.]

53-2-1109. Effect of merger. [I.C., § 53-2-1109, as added by 2006, ch. 144, § 2, p. 407; am. 2007, ch. 314, § 60, p. 887.]

53-2-1110. Restrictions on approval of conversions and mergers and on relinquishing LLLP status. [I.C., § 53-2-1110, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1111. Liability of general partner after conversion or merger.  
Liability of general partner after conversion or merger

53-2-1112. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. [I.C., § 53-2-1112, as added by 2006, ch. 144, § 2, p. 407.] Annotations 53-2-1113. Part not exclusive. [I.C., § 53-2-1113, as added by 2006, ch. 144, § 2, p. 407.]





## **Part 12**

### **Miscellaneous Provisions**

« Title 53 •, « Ch. 2 », « Pt. 12 •, • § 53-2-1201 •

Idaho Code § 53-2-1201

#### **§ 53-2-1201 — 53-2-1205. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-21-701 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 2, Part 12, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 4, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-2-1201. Uniformity of application and construction. [I.C., § 53-2-1201, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1202. Severability clause. [I.C., § 53-2-1202, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1203. Relation to electronic signatures in global and national commerce act. [I.C., § 53-2-1203, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1204. Application to existing relationships. [I.C., § 53-2-1204, as added by 2006, ch. 144, § 2, p. 407.]

53-2-1205. Savings clause. [I.C., § 53-2-1205, as added by 2006, ch. 144, § 2, p. 407.]



## Chapter 3

# UNIFORM PARTNERSHIP ACT

### Part 1. General Provisions

Sec.

53-3-101 — 53-3-107. [Repealed.]

### Part 2. Nature of Partnership

53-3-201 — 53-2-204. [Repealed.]

### Part 3. Relations of Partners to Persons Dealing with Partnership

53-3-301 — 53-3-308. [Repealed.]

### Part 4. Relations of Partners to Each Other and to Partnership

53-3-401 — 53-3-406. [Repealed.]

### Part 5. Transferees and Creditors of Partner

53-3-501 — 53-3-504. [Repealed.]

### Part 6. Partner's Dissociation

53-3-601 — 53-3-603. [Repealed.]

### Part 7. Partner's Dissociation When Business not Wound Up

53-3-701 — 53-3-705. [Repealed.]

### Part 8. Winding Up Partnership Business

53-3-801 — 53-3-807. [Repealed.]

### Part 9. Conversions and Mergers

53-3-901 — 53-3-908. [Repealed.]

Part 10. Limited Liability Partnership

53-3-1001 — 53-3-1003A. [Repealed.]

Part 11. Foreign Limited Liability Partnership

53-3-1101 — 53-3-1105. [Repealed.]

Part 12. Miscellaneous Provisions

53-3-1201 — 53-3-1205. [Repealed.]



## **Part 1**

### **General Provisions**

« Title 53 •, « Ch. 3 », • Pt. 1 », • § 53-3-101 •

Idaho Code § 53-3-101

#### **§ 53-3-101 — 53-3-107. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-101 et seq.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former Title 53, Chapter 3, Uniform Partnership Law, which consisted of §§ 53-301 — 53-343C, were repealed effective July 1, 2001, pursuant to S.L. 1998, ch. 65, §§ 1 and 3: 53-301, which comprised as 1919, ch. 154, § 1, p. 493; C.S., § 5813; I.C.A., § 52-301.

53-302, which comprised as 1919, ch. 154, § 2, p. 493; C.S., § 5814; I.C.A., § 52-302; am. 1935, ch. 29, § 1, p. 52; am. 1995, ch. 92, § 1, p. 263.

53-303, which comprised as 1919, ch. 154, § 3, p. 493; C.S., § 5815; I.C.A., § 52-303.

53-304, which comprised as 1919, ch. 154, § 4, p. 493; C.S., § 5816; I.C.A., § 52-304.

53-305, which comprised as 1919, ch. 154, § 5, p. 493; C.S., § 5817; I.C.A., § 52-305.

53-306, which comprised as 1919, ch. 154, § 6, p. 493; C.S., § 5818; I.C.A., § 52-306; am. 1995, ch. 92, § 2, p. 263.

53-307, which comprised as 1919, ch. 154, § 7, p. 493; C.S., § 5819; I.C.A., § 52-307.

53-308, which comprised as 1919, ch. 154, § 8, p. 493; C.S., § 5820; I.C.A., § 52-308.

53-309, which comprised as 1919, ch. 154, § 9, p. 493; C.S., § 5821; I.C.A., § 52-309.

53-310, which comprised as 1919, ch. 154, § 10, p. 493; C.S., § 5822; I.C.A., § 52-310.

53-311, which comprised as 1919, ch. 154, § 11, p. 493; C.S., § 5823; I.C.A., § 53-311.

53-312, which comprised as 1919, ch. 154, § 12, p. 493; C.S., § 5824; I.C.A., § 52-312.

53-313, which comprised as 1919, ch. 154, § 13, p. 493; C.S., § 5825; I.C.A., § 52-313.

53-314, which comprised as 1919, ch. 154, § 14, p. 493; C.S., § 5826; I.C.A., § 52-314.

53-315, which comprised as 1919, ch. 154, § 15, p. 493; C.S., § 5827; I.C.A., § 52-315; am. 1995, ch. 92, § 3, p. 263.

53-316, which comprised as 1919, ch. 154, § 16, p. 493; C.S., § 5828; I.C.A., § 52-316.

53-317, which comprised as 1919, ch. 154, § 17, p. 493; C.S., § 5829; I.C.A., § 52-317.

53-318, which comprised as 1919, ch. 154, § 18, p. 493; C.S., § 5830; I.C.A., § 52-318; am. 1995, ch. 92, § 4, p. 263.

53-319, which comprised as 1919, ch. 154, § 19, p. 493; C.S., § 5831; I.C.A., § 52-319.

53-320, which comprised as 1919, ch. 154, § 20, p. 493; C.S., § 5832; I.C.A., § 52-320.

53-321, which comprised as 1919, ch. 154, § 21, p. 493; C.S., § 5833; I.C.A., § 52-321.

53-322, which comprised as 1919, ch. 154, § 22, p. 493; C.S., § 5834; I.C.A., § 52-322.

53-323, which comprised as 1919, ch. 154, § 23, p. 493; C.S., § 5835; I.C.A., § 52-323.

53-324, which comprised as 1919, ch. 154, § 24, p. 493; C.S., § 5836; I.C.A., § 52-324.

53-325, which comprised as 1919, ch. 154, § 25, p. 493; C.S., § 5837; I.C.A., § 52-325.

53-326, which comprised as 1919, ch. 154, § 26, p. 493; C.S., § 5838; I.C.A., § 52-326.

53-327, which comprised as 1919, ch. 154, § 27, p. 493; C.S., § 5839; I.C.A., § 52-327.

53-328, which comprised as 1919, ch. 154, § 28, p. 493; C.S., § 5840; I.C.A., § 52-328.

53-329, which comprised as 1919, ch. 154, § 29, p. 493; C.S., § 5841; I.C.A., § 52-329.

53-330, which comprised as 1919, ch. 154, § 30, p. 493; C.S., § 5842; I.C.A., § 52-330.

53-331, which comprised as 1919, ch. 154, § 31, p. 493; C.S., § 5843; I.C.A., § 52-331.

53-332, which comprised as 1919, ch. 154, § 32, p. 493; C.S., § 5844; I.C.A., § 52-332.

53-333, which comprised as 1919, ch. 154, § 33, p. 493; C.S., § 5845; I.C.A., § 52-333; am. 1995, ch. 92, § 5, p. 263.

53-334, which comprised as 1919, ch. 154, § 34, p. 493; C.S., § 5846; I.C.A., § 52-334; am. 1995, ch. 92, § 5, p. 263.

53-335, which comprised as 1919, ch. 154, § 35, p. 493; C.S., § 5847; I.C.A., § 52-335.

53-336, which comprised as 1919, ch. 154, § 36, p. 493; C.S., § 5848; I.C.A., § 52-336; am. 1995, ch. 92, § 6, p. 263.

53-337, which comprised as 1919, ch. 154, § 37, p. 493; C.S., § 5849; I.C.A., § 52-337.

53-338, which comprised as 1919, ch. 154, § 38, p. 493; C.S., § 5850; I.C.A., § 52-338.



53-339, which comprised as 1919, ch. 154, § 39, p. 493; C.S., § 5851; I.C.A., § 52-339.

53-340, which comprised as 1919, ch. 154, § 40, p. 493; C.S., § 5852; I.C.A., § 52-340; am. 1995, ch. 92, § 7, p. 263.

53-341, which comprised as 1919, ch. 154, § 41, p. 493; C.S., § 5853; I.C.A., § 52-341.

53-342, which comprised as 1919, ch. 154, § 42, p. 493; C.S., § 5854; I.C.A., § 52-342.

53-343, which comprised as 1919, ch. 154, § 43, p. 493; C.S., § 5855; I.C.A., § 52-343.

53-343A, which comprised as **I.C., § 53-343A**, as added by 1995, ch. 92, § 8, p. 263; am. 1997, ch. 151, § 4, p. 429.

53-343B, which comprised as **I.C., § 53-343B**, as added by 1995, ch. 92, § 9, p. 263.

53-343C, which comprised as **I.C., § 53-343C**, as added by 1995, ch. 92, § 10, p. 263.

### **Compiler's Notes.**

Title 53, Chapter 3, Part 1, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-101. Definitions. [**I.C., § 53-3-101**, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 116, § 9, p. 333; am. 2007, ch. 314, § 61, p. 887.]

53-3-102. Knowledge and notice. [**I.C., § 53-3-102**, as added by 1998, ch. 65, § 2, p. 226.]

53-3-103. Effect of partnership agreement — Nonwaivable provisions. [**I.C., § 53-3-103**, as added by 1998, ch. 65, § 2, p. 226.]

53-3-104. Supplemental principles of law. [**I.C., § 53-3-104**, as added by 1998, ch. 65, § 2, p. 226.]

53-3-105. Execution and filing of statements. [**I.C., § 53-3-105**, as added by 1998, ch. 65, § 2, p. 226.]

53-3-105A. . Fees. [I.C., § 53-3-105A, as added by 1998, ch. 65, § 2, p. 226.]

53-3-106. Governing law. [I.C., § 53-3-106, as added by 1998, ch. 65, § 2, p. 226.]

53-3-107. Partnership subject to amendment or repeal of act. [I.C., § 53-3-107, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 2**

### **Nature of Partnership**

« Title 53 •, « Ch. 3 », « Pt. 2 », • § 53-3-201 •

Idaho Code § 53-3-201

#### **§ 53-3-201 — 53-2-204. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-201 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 2, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-201. Partnership as entity. [I.C., § 53-3-201, as added by 1998, ch. 65, § 2, p. 226.]

53-3-202. Formation of partnership. [I.C., § 53-3-202, as added by 1998, ch. 65, § 2, p. 226.]

53-3-203. Partnership property. [I.C., § 53-3-203, as added by 1998, ch. 65, § 2, p. 226.]

53-3-204. When property is partnership property. [I.C., § 53-3-204, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 3**

### **Relations of Partners to Persons Dealing with Partnership**

« Title 53 •, « Ch. 3 », « Pt. 3 », • § 53-3-301 •

Idaho Code § 53-3-301

#### **§ 53-3-301 — 53-3-308. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-301 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 3, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-301. Partner agent of partnership. [I.C., § 53-3-301, as added by 1998, ch. 65, § 2, p. 226.]

53-3-302. Transfer of partnership property. [I.C., § 53-3-302, as added by 1998, ch. 65, § 2, p. 226.]

53-3-303. Statement of partnership authority. [I.C., § 53-3-303, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 325, § 4, p. 1095.]

53-3-304. Statement of denial. [I.C., § 53-3-304, as added by 1998, ch. 65, § 2, p. 226.]

53-3-305. Partnership liable for partner's actionable conduct. [I.C., § 53-3-305, as added by 1998, ch. 65, § 2, p. 226.]

53-3-306. Partner's liability. [I.C., § 53-3-306, as added by 1998, ch. 65, § 2, p. 226.]

53-3-307. Actions by and against partnership and partners. [I.C., § 53-3-307, as added by 1998, ch. 65, § 2, p. 226.]

53-3-308. Liability of purported partner. [I.C., § 53-3-308, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 4**

### **Relations of Partners to Each Other and to Partnership**

« Title 53 •, « Ch. 3 », « Pt. 4 », • § 53-3-401 •

Idaho Code § 53-3-401

#### **§ 53-3-401 — 53-3-406. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-401 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 4, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-401. Partner's rights and duties. [I.C., § 53-3-401, as added by 1998, ch. 65, § 2, p. 226.]

53-3-402. Distributions in kind. [I.C., § 53-3-402, as added by 1998, ch. 65, § 2, p. 226.]

53-3-403. Partner's rights and duties with respect to information. [I.C., § 53-3-403, as added by 1998, ch. 65, § 2, p. 226.]

53-3-404. General standards of partner's conduct. [I.C., § 53-3-404, as added by 1998, ch. 65, § 2, p. 226.]

53-3-405. Actions by partnership and partners. [I.C., § 53-3-405, as added by 1998, ch. 65, § 2, p. 226.]

53-3-406. Continuation of partnership beyond definite term or particular undertaking. [I.C., § 53-3-406, as added by 1998, ch. 65, § 2, p. 226.]





## **Part 5**

### **Transferees and Creditors of Partner**

« Title 53 •, « Ch. 3 », « Pt. 5 », • § 53-3-501 •

Idaho Code § 53-3-501

#### **§ 53-3-501 — 53-3-504. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-501 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 5, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-501. Partner not co-owner of partnership property. [I.C., § 53-3-501, as added by 1998, ch. 65, § 2, p. 226.]

53-3-502. Partner's transferable interest in partnership. [I.C., § 53-3-502, as added by 1998, ch. 65, § 2, p. 226.]

53-3-503. Transfer of partner's transferable interest. [I.C., § 53-3-503, as added by 1998, ch. 65, § 2, p. 226.]

53-3-504. Partner's transferable interest subject to charging order. [I.C., § 53-3-504, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 6**

### **Partner's Dissociation**

« Title 53 •, « Ch. 3 », « Pt. 6 », • § 53-3-601 •

Idaho Code § 53-3-601

#### **§ 53-3-601 — 53-3-603. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-601 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 6, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-601. Events causing partner's dissociation. [I.C., § 53-3-601, as added by 1998, ch. 65, § 2, p. 226.]

53-3-602. Partner's power to dissociate — Wrongful dissociation. [I.C., § 53-3-602, as added by 1998, ch. 65, § 2, p. 226.]

53-3-603. Effect of partner's dissociation. [I.C., § 53-3-603, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 7**

### **Partner's Dissociation When Business not Wound Up**

« Title 53 •, « Ch. 3 », « Pt. 7 », • § 53-3-701 •

Idaho Code § 53-3-701

#### **§ 53-3-701 — 53-3-705. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-701 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 7, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-701. Purchase of dissociated partner's interest. [I.C., § 53-3-701, as added by 1998, ch. 65, § 2, p. 226.]

53-3-701A. Dissolution within ninety days after dissociation. [I.C., § 53-3-701A, as added by 1998, ch. 65, § 2, p. 226.]

53-3-702. Dissociated partner's power to bind and liability to partnership. [I.C., § 53-3-702, as added by 1998, ch. 65, § 2, p. 226.]

53-3-703. Dissociated partner's liability to other persons. [I.C., § 53-3-703, as added by 1998, ch. 65, § 2, p. 226.]

53-3-704. Statement of dissociation. [I.C., § 53-3-704, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 123, § 1, p. 290.]

53-3-705. Continued use of partnership name. [I.C., § 53-3-705, as added by 1998, ch. 65, § 2, p. 226.]



## Part 8

### Winding Up Partnership Business

« Title 53 •, « Ch. 3 », « Pt. 8 », • § 53-3-801 •

Idaho Code § 53-3-801

#### **§ 53-3-801 — 53-3-807. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-801 et seq.

### STATUTORY NOTES

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 8, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-801. Events causing dissolution and winding up of partnership business. [I.C., § 53-3-801, as added by 1998, ch. 65, § 2, p. 226.]

53-3-802. Partnership continues after dissolution. [I.C., § 53-3-802, as added by 1998, ch. 65, § 2, p. 226.]

53-3-803. Right to wind up partnership business. [I.C., § 53-3-803, as added by 1998, ch. 65, § 2, p. 226.]

53-3-804. Partner's power to bind partnership after dissolution. [I.C., § 53-3-804, as added by 1998, ch. 65, § 2, p. 226.]

53-3-805. Statement of dissolution. [I.C., § 53-3-805, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 123, § 2, p. 290.]

53-3-806. Partner's liability to other partners after dissolution. [I.C., § 53-3-806, as added by 1998, ch. 65, § 2, p. 226.]

53-3-807. Settlement of accounts and contributions among partners. [I.C., § 53-3-807, as added by 1998, ch. 65, § 2, p. 226.]





## Part 9

### Conversions and Mergers

« Title 53 •, « Ch. 3 », « Pt. 9 », • § 53-3-901 •

Idaho Code § 53-3-901

#### **§ 53-3-901 — 53-3-908. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-22-201 et seq. and § 30-22-401 et seq.

### STATUTORY NOTES

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 9, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-901. Definitions. [I.C., § 53-3-901, as added by 1998, ch. 65, § 2, p. 226.]

53-3-901A. Applicability of Idaho entity transactions act. [I.C., § 53-3-901A, as added by 2007, ch. 116, § 10, p. 333.]

53-3-902. Conversion of partnership to limited partnership. [I.C., § 53-3-902, as added by 1998, ch. 65, § 2, p. 226.]

53-3-903. Conversion of limited partnership to partnership. [I.C., § 53-3-903, as added by 1998, ch. 65, § 2, p. 226.]

53-3-904. Effect of conversion — Entity unchanged. [I.C., § 53-3-904, as added by 1998, ch. 65, § 2, p. 226.]

53-3-905. Merger of partnerships. [I.C., § 53-3-905, as added by 1998, ch. 65, § 2, p. 226.]

53-3-906. Effect of merger. [I.C., § 53-3-906, as added by 1998, ch. 65, § 2, p. 226.]

53-3-907. Statement of merger. [I.C., § 53-3-907, as added by 1998, ch. 65, § 2, p. 226.]

53-3-908. Nonexclusive. [I.C., § 53-3-908, as added by 1998, ch. 65, § 2, p. 226.]



## **Part 10**

### **Limited Liability Partnership**

« Title 53 •, « Ch. 3 », « Pt. 10 », • § 53-3-1001 •

Idaho Code § 53-3-1001

#### **§ 53-3-1001 — 53-3-1003A. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-23-901 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 10, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-1001. Statement of qualification. [I.C., § 53-3-1001, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 314, § 62, p. 887.]

53-3-1001A. Consolidated statement of partnership authority and qualification. [I.C., § 53-3-1001A, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1001B. Change of registered agent. [I.C., § 53-3-1001B, as added by 1998, ch. 65, § 2, p. 226; am. 2000, ch. 124, § 8, p. 291.]

53-3-1002. Name. [I.C., § 53-3-1002, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1003. Annual report. [I.C., § 53-3-1003, as added by 1998, ch. 65, § 2, p. 226; am. 2003, ch. 207, § 4, p. 550; am. 2005, ch. 274, § 4, p. 842; am. 2007, ch. 314, § 63, p. 887.]

53-3-1003A. Revocation of statement of qualification. [I.C., § 53-3-1003A, as added by 1998, ch. 65, § 2, p. 226; am. 2003, ch. 207, § 5, p. 550.]



## **Part 11**

### **Foreign Limited Liability Partnership**

« Title 53 •, « Ch. 3 », « Pt. 11 », • § 53-3-1101 •

Idaho Code § 53-3-1101

#### **§ 53-3-1101 — 53-3-1105. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-21-501 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 11, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-1101. Law governing foreign limited liability partnership. [I.C., § 53-3-1101, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1102. Statement of foreign qualification. [I.C., § 53-3-1102, as added by 1998, ch. 65, § 2, p. 226; am. 2007, ch. 314, § 64, p. 885.]

53-3-1103. Effect of failure to qualify. [I.C., § 53-3-1103, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1104. Activities not constituting transacting business. [I.C., § 53-3-1104, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1105. Action by attorney general. [I.C., § 53-3-1105, as added by 1998, ch. 65, § 2, p. 226.]





## **Part 12**

### **Miscellaneous Provisions**

« Title 53 •, « Ch. 3 », « Pt. 12 •, • § 53-3-1201 •

Idaho Code § 53-3-1201

#### **§ 53-3-1201 — 53-3-1205. [Repealed.]**

Repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017. For present comparable provisions, see § 30-21-701 et seq.

### **STATUTORY NOTES**

#### **Compiler's Notes.**

Title 53, Chapter 3, Part 12, which comprised the following sections, was repealed by S.L. 2015, ch. 243, § 5, as amended by S.L. 2015, ch. 337, § 4, effective July 1, 2017.

53-3-1201. Uniformity of application and construction. [I.C., § 53-3-1201, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1202. Short title. [I.C., § 53-3-1202, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1203. Severability clause. [I.C., § 53-3-1203, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1204. Applicability. [I.C., § 53-3-1204, as added by 1998, ch. 65, § 2, p. 226.]

53-3-1205. Savings clause. [I.C., § 53-3-1205, as added by 1998, ch. 65, § 2, p. 226.]



## Chapter 4

### MINING PARTNERSHIP

Sec.

53-401. When mining partnership exists.

53-402. Express agreement not necessary.

53-403. Sharing profits and losses.

53-404. Lien of partners and creditors.

53-405. Mine partnership property.

53-406. Sale of interest by partner.

53-407. Liability of purchaser for partners' liens for debts and advancements.

53-408. Liability of purchaser for liens resulting from relation of partners to each other.

53-409. Members cannot bind partnership.

53-410. Majority of shares governs.

53-411. Partnership contracts may be recorded.

53-412. Record constructive notice.

**§ 53-401. When mining partnership exists.** — A mining partnership exists when two (2) or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same.

**History.**

R.S., § 3300; reen. R.C. & C.L., § 3361; C.S., § 5856; I.C.A., § 52-401.

**STATUTORY NOTES**

**Cross References.**

Mines and mining, title 47, Idaho Code.

**CASE NOTES**

**Formation and Nature of Partnership.**

It is not necessary that all co-owners in claim shall be engaged in working it, either together or separately, in order to constitute a mining partnership. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Parties who acquire a mine for purpose of working it and actually engage in working same comprise a mining partnership although they do not own the same. *Haskins v. Curran*, 4 Idaho 573, 43 P. 559 (1895).

To constitute mining partnership it is essential that co-owners actually engage in working mine or in business of operating it; the cotenancy of two or more persons in a mining claim is not of itself sufficient to constitute such tenants mining partners. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

It is not essential that all tenants join in the working or business of mining in order to establish mining partnership; that relation may be established among such co-owners as have actually engaged in the working or mining operation; those not so engaged will be left to their right and be

chargeable by their duties as cotenants only. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

A mining partnership differs from an ordinary one in that it is formed without any express agreement between the parties and exists from joint ownership in a mine and working the same. One partner may sell his interest without consent of the others, or die, and the partnership is not dissolved. A new owner may purchase an interest in the mine, or inherit it, and he becomes a mining partner in the working thereof. It differs from an ordinary partnership in another respect also, in that the majority in interest have the right to control the method of working and the means to be employed. In these respects and in its continuity, it resembles a private corporation. *Albertini v. Hull Lease*, 54 Idaho 30, 28 P.2d 205 (1933).

**§ 53-402. Express agreement not necessary.** — An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interest in the mine and working the same for the purpose of extracting the minerals therefrom.

**History.**

R.S., § 3301; reen. R.C. & C.L., § 3362; C.S., § 5857; I.C.A., § 52-402.

**CASE NOTES**

**Necessity for Agreement.**

Mining partnership exists without any agreement, either express or implied, and relation differs in this from that of tenants in common. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-403. Sharing profits and losses.** — A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine, bears to the whole partnership capital or whole number of shares.

**History.**

R.S., § 3302; reen. R.C. & C.L., § 3363; C.S., § 5858; I.C.A., § 52-403.

**CASE NOTES**

**Rights of Majority.**

Those owning a majority of shares or interests in mining partnership have the right to control its methods of working; therefore, majority owner of shares in mining partnership is entitled to an injunction to restrain other partners from working claim except in the manner directed by him. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-404. Lien of partners and creditors.** — Each member of a mining partnership has a lien on the partnership property for the debts due to the creditors thereof, and for money advanced by him for its use. A lien exists in favor of the creditors notwithstanding there is an agreement among the partners that it must not.

**History.**

R.S., § 3303; reen. R.C. & C.L., § 3364; C.S., § 5859; I.C.A., § 52-404.

**STATUTORY NOTES**

**Cross References.**

Protection of creditor's lien on unpatented claim pending foreclosure, §§ 47-1101, 47-1102.

**CASE NOTES**

**Cited** *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).



**§ 53-405. Mine partnership property.** — The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

**History.**

R.S., § 3304; reen. R.C. & C.L., § 3365; C.S., § 5860; I.C.A., § 52-405.

**CASE NOTES**

Mining ground.

Rights of majority.

**Mining Ground.**

Mining ground is partnership property, whether purchased with partnership or individual funds. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

**Rights of Majority.**

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-406. Sale of interest by partner.** — One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

**History.**

R.S., § 3305; reen. R.C. & C.L., § 3366; C.S., § 5861; I.C.A., § 52-406.

**CASE NOTES**

**Rights of Majority.**

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-407. Liability of purchaser for partners' liens for debts and advancements.** — A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership unless he purchased in good faith, for a valuable consideration, without notice of such lien.

**History.**

R.S., § 3306; reen. R.C. & C.L., § 3367; C.S., § 5862; I.C.A., § 52-407.

**CASE NOTES**

**Rights of Majority.**

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-408. Liability of purchaser for liens resulting from relation of partners to each other.** — A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

**History.**

R.S., § 3307; reen. R.C. & C.L., § 3368; C.S., § 5863; I.C.A., § 52-408.

**CASE NOTES**

**Rights of Majority.**

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-409. Members cannot bind partnership.** — No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership except by express authority derived from the members thereof.

**History.**

R.S., § 3308; reen. R.C. & C.L., § 3369; C.S., § 5864; I.C.A., § 52-409.

**CASE NOTES**

**Rights of Majority.**

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-410. Majority of shares governs.** — The decision of the members, owning a majority of the shares or interests in a mining partnership, binds it in the conduct of its business.

**History.**

R.S., § 3309; reen. R.C. & C.L., § 3370; C.S., § 5865; I.C.A., § 52-410.

**CASE NOTES**

Nature of partnership.

Rights of majority.

**Nature of Partnership.**

It is not essential that all tenants join in the working or business of mining in order to establish mining partnership; that relation may be established among such co-owners as have actually engaged in the working or mining operation; those not so engaged will be left to their right and be chargeable by their duties as cotenants only. *Madar v. Norman*, 13 Idaho 585, 92 P. 572 (1907).

**Rights of Majority.**

Those owning a majority of shares or interests in mining partnership have the right to control its methods of working; therefore, majority owner of shares in mining partnership is entitled to an injunction to restrain other partners from working claim except in the manner directed by him. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 241, 28 P. 433 (1891).

Minority owner has the right to inspect property to ascertain its value and methods in use for working the same, so far as may be necessary for protection of his interest and to enable him to dispose of the same, but he cannot work it against protest of majority owners. *Hawkins v. Spokane Hydraulic Mining Co.*, 3 Idaho 650, 33 P. 40 (1893).

**§ 53-411. Partnership contracts may be recorded.** — Written contracts relating to prospecting or mining, or the formation of copartnership for that purpose, when signed by the parties thereto and indorsed by at least one witness, may be recorded in the office of the county recorder of the county wherein it is proposed to prosecute the business of said copartnership, or where the property affected by such contract is situated.

**History.**

1899, p. 366, § 1; reen. R.C. & C.L., § 3371; C.S., § 5866; I.C.A., § 52-411.

**§ 53-412. Record constructive notice.** — Such record shall be constructive notice to all persons of the matters contained in such contract or copartnership agreement.

**History.**

1899, p. 366, § 2; reen. R.C. & C.L., § 3372; C.S., § 5867; I.C.A., § 52-412.





## Chapter 5

### ASSUMED BUSINESS NAMES

Sec.

53-501 — 53-511. [Repealed.]

**§ 53-501. Short title. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-801.

**History.**

I.C., § 53-501, as added by 1996, ch. 218, § 2, p. 718.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-501, which comprised 1921, ch. 212, § 1, p. 424; I.C.A., § 52-501, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-502. Purpose. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-802.

**History.**

**I.C., § 53-502**, as added by 1996, ch. 218, § 2, p. 718.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-502, which comprised 1921, ch. 212, § 2, p. 424; I.C.A., § 52-502, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-503. Definitions. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-803.

**History.**

**I.C., § 53-503**, as added by 1996, ch. 218, § 2, p. 718; am. 1997, ch. 133, § 1, p. 400; am. 2005, ch. 272, § 4, p. 836.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-503, which was compiled as 1921, ch. 212, § 2, p. 424; I.C.A., § 52-502, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-504. Filing of certificate required. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-805.

**History.**

**I.C., § 53-504**, as added by 1996, ch. 218, § 2, p. 718.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-504, which comprised 1921, ch. 212, § 4, p. 424; I.C.A., § 52-504; 1994, ch. 405, § 8, p. 1272; 1995, ch. 92, § 11, p. 263, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-505. Contents of certificate. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-806.

**History.**

**I.C., § 53-505**, as added by 1996, ch. 218, § 2, p. 718.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-505, which comprised 1921, ch. 212, § 5, p. 424; I.C.A., § 52-505; am. 1951, ch. 251, § 6, p. 540; am. 1959, ch. 72, § 6, p. 157; am. 1981, ch. 294, § 1, p. 614; am. 1982, ch. 208, § 1, p. 571; am 1989, ch. 12, § 2, p. 13, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-506. Effect of filing — Duration — Continuation. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-807.

**History.**

**I.C., § 53-506**, as added by 1996, ch. 218, § 2, p. 718; am. 2003, ch. 223, § 1, p. 575.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-506, which comprised 1921, ch. 212, § 6, p. 424; I.C.A., § 52-506, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.



**§ 53-507. Amendment of certificate. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-808.

**History.**

**I.C., § 53-507**, as added by 1996, ch. 218, § 2, p. 718.

**STATUTORY NOTES**

**Prior Laws.**

Former § 53-507, which comprised 1921, ch. 212, § 7, p. 424; I.C.A., § 52-507, was repealed by S.L. 1996, ch. 218, § 1, effective January 1, 1997.

**§ 53-508. Cancellation of certificate. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-809.

**History.**

**I.C., § 53-508**, as added by 1996, ch. 218, § 2, p. 718.

**§ 53-509. Consequences of noncompliance. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-810.

**History.**

**I.C., § 53-509**, as added by 1996, ch. 218, § 2, p. 718.

**§ 53-510. Fees. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 3, effective July 1, 2015. For present comparable provisions, see § 30-21-214.

**History.**

**I.C., § 53-510**, as added by 1996, ch. 218, § 2, p. 718; am. 2003, ch. 223, § 2, p. 575.

**§ 53-511. Dates of coverage — Transition. [Repealed.]**

Repealed by S.L. 2003, ch. 223, § 3, and S.L. 2015, ch. 251, § 3, effective July 1, 2015..

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 53-511, as added by 1996, ch. 218, § 2, p. 718, was repealed by S.L. 2003, ch. 223, § 3.



Chapter 6  
IDAHO LIMITED LIABILITY COMPANY ACT

Sec.

53-601 — 53-672. [Repealed.]

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**STATUTORY NOTES**

**Compiler's Notes.**

This chapter was repealed effective July 1, 2010, pursuant to S.L. 2008, ch. 176, §§ 5, 6. See § 30-6-1104.

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**§ 53-601 — 53-672. [Repealed.]**

Repealed by S.L. 2008, ch. 176, § 5, effective July 1, 2010. See present comparable provisions, § 30-21-101 et seq.

**STATUTORY NOTES**

**Compiler's Notes.**

Chapter 6 of Title 53, which comprised the following sections, was repealed by S.L. 2008, ch. 176, § 5, effective July 1, 2010.

53-601. Definitions. [I.C., § 53-601, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 5, p. 916.]

53-602. Name. [I.C., § 53-602, as added by 1993, ch. 224, § 1, p. 760; am. 1995, ch. 126, § 26, p. 542; am. 1999, ch. 212, § 6, p. 563; am. 2005, ch. 272, § 5, p. 836.]

53-603. Reservation of name. [I.C., § 53-603, as added by 1993, ch. 224, § 1, p. 760.]

53-604. Registered office and registered agent. I.C., § 53-604, as added by 1993, ch. 224, § 1, p. 760; am. 1996, ch. 395, § 1, p. 1323; am. 1998, ch. 268, § 1, p. 887; am. 2000, ch. 124, § 5, p. 291, repealed by S.L. 2007, ch. 314, § 65. See § 30-401 et seq.]

53-605. Nature of business. [I.C., § 53-605, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 2, p. 887.]

53-606. Service of process. [I.C., § 53-606, as added by 1993, ch. 224, § 1, p. 760, was repealed by S.L. 2007, ch. 314, § 65.]

53-607. Formation. [I.C., § 53-607, as added by 1993, ch. 224, § 1, p. 760.]

53-608. Articles of organization. [I.C., § 53-608, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 6, p. 916; am. 1997, ch. 151, § 5, p. 429; am. 1998, ch. 268, § 3, p. 887; am. 2000, ch. 124, § 6, p. 291; am. 2007, ch. 314, § 66, p. 887.]



53-609. Amendment of articles of organization — Restatement. [I.C., § 53-609, as added by 1993, ch. 224, § 1, p. 760.]

53-610. Execution of documents. [I.C., § 53-610, as added by 1993, ch. 224, § 1, p. 760.]

53-611. Filing with the secretary of state. [I.C., § 53-611, as added by 1993, ch. 224, § 1, p. 760.]

53-612. Effect of filing of articles of organization. [I.C., § 53-612, as added by 1993, ch. 224, § 1, p. 760.]

53-613. Annual report of domestic and foreign limited liability companies. [I.C., § 53-613, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 7, p. 916; am. 1995, ch. 126, § 27, p. 542; am. 1996, ch. 395, § 2, p. 1323; am. 1998, ch. 268, § 4, p. 887; am. 1999, ch. 210, § 3, p. 559; am. 2003, ch. 207, § 3, p. 550; am. 2005, ch. 274, § 3, p. 842; am. 2007, ch. 314, § 67, p. 887.]

53-614. Involuntary cancellation of articles of organization or registration as a foreign limited liability company. [I.C., § 53-614, as added by 1993, ch. 224, § 1, p. 760; am. 1996, ch. 395, § 3, p. 1323, was repealed by S.L. 1998, ch. 268, § 5, p. 887 effective July 1, 1998.]

53-615. Professional service limited liability companies. [I.C., § 53-615, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 8, p. 916; am. 2002, ch. 218, § 1, p. 596.]

53-616. Agency power of members and managers. [I.C., § 53-616, as added by 1993, ch. 224, § 1, p. 760.]

53-617. Admission of members and managers. [I.C., § 53-617, as added by 1993, ch. 224, § 1, p. 760.]

53-618. Limited liability company charged with knowledge of or notice to member or manager. [I.C., § 53-618, as added by 1993, ch. 224, § 1, p. 760.]

53-619. Liability of members to third parties. [I.C., § 53-619, as added by 1993, ch. 224, § 1, p. 760.]

53-620. Parties to actions. [I.C., § 53-620, as added by 1993, ch. 224, § 1, p. 760.]

53-621. Management. [I.C., § 53-621, as added by 1993, ch. 224, § 1, p. 760.]

53-622. Duties of managers and members. [I.C., § 53-622, as added by 1993, ch. 224, § 1, p. 760.]

53-623. Voting. [I.C., § 53-623, as added by 1993, ch. 224, § 1, p. 760.]

53-624. Limitation of liability and indemnification of members and managers. [I.C., § 53-624, as added by 1993, ch. 224, § 1, p. 760.]

53-625. Records and information. [I.C., § 53-625, as added by 1993, ch. 224, § 1, p. 760.]

53-626. Contributions to capital. [I.C., § 53-626, as added by 1993, ch. 224, § 1, p. 760.]

53-627. Liability for contributions. [I.C., § 53-627, as added by 1993, ch. 224, § 1, p. 760.]

53-628. Sharing of profits. [I.C., § 53-628, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 9, p. 916.]

53-629. Sharing of interim distributions. [I.C., § 53-629, as added by 1993, ch. 224, § 1, p. 760.]

53-630. Distributions on an event of dissociation. [I.C., § 53-630, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 10, p. 916.]

53-631. Distribution in kind. [I.C., § 53-631, as added by 1993, ch. 224, § 1, p. 760.]

53-632. Ownership of limited liability company property. [I.C., § 53-632, as added by 1993, ch. 224, § 1, p. 760.]

53-633. Ownership of limited liability company property. [I.C., § 53-633, as added by 1993, ch. 224, § 1, p. 760.]

53-634. Transfer of property. [I.C., § 53-634, as added by 1993, ch. 224, § 1, p. 760.]

53-635. Nature of limited liability company interest. [I.C., § 53-635, as added by 1993, ch. 224, § 1, p. 760.]

53-636. Assignment of limited liability company interest. [I.C., § 53-637, as added by 1993, ch. 224, § 1, p. 760; am. 2005, ch. 111, § 1, p. 362.]

53-637. Rights of judgment creditor. [I.C., § 53-637, as added by 1993, ch. 224, § 1, p. 760; am. 2005, ch. 111, § 1, p. 362.]

53-638. Right of assignee to become a member. [I.C., § 53-638, as added by 1993, ch. 224, § 1, p. 760.]

53-639. Powers of estate of a deceased or incompetent member. [I.C., § 53-639, as added by 1993, ch. 224, § 1, p. 760.]

53-640. Admission of members. [I.C., § 53-640, as added by 1993, ch. 224, § 1, p. 760.]

53-641. Events of dissociation. [I.C., § 53-641, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 6, p. 887.]

53-642. Dissolution. [I.C., § 53-642, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 7, p. 887.]

53-643. Judicial dissolution. [I.C., § 53-643, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 8, p. 887.]

53-643A. Grounds for administrative dissolution. [I.C., § 53-643A, as added by 1998, ch. 268, § 9, p. 887; am. 2007, ch. 314, § 68, p. 887.]

53-643B. Procedure for and effect of administrative dissolution. [I.C., § 53-643B, as added by 1998, ch. 268, § 10, p. 887; am. 2007, ch. 314, § 69, p. 887.]

53-644. Winding up. [I.C., § 53-644, as added by 1993, ch. 224, § 1, p. 760.]

53-645. Agency power of managers or members after dissolution. [I.C., § 53-645, as added by 1993, ch. 224, § 1, p. 760.]

53-646. Distribution of assets. [I.C., § 53-646, as added by 1993, ch. 224, § 1, p. 760.]

53-647. Articles of dissolution. [I.C., § 53-647, as added by 1993, ch. 224, § 1, p. 760; am. 1998, ch. 268, § 12, p. 887.]

53-648. Known claims against dissolved limited liability company. [I.C., § 53-648, as added by 1993, ch. 224, § 1, p. 760.]

53-649. Unknown claims against dissolved limited liability company. [I.C., § 53-649, as added by 1993, ch. 224, § 1, p. 760.]

53-650. Law governing foreign limited liability companies. [I.C., § 53-650, as added by 1993, ch. 224, § 1, p. 760.]

53-651. Registration. [I.C., § 53-651, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 11, p. 916; am. 2000, ch. 124, § 7, p. 291; am. 2007, ch. 314, § 70, p. 887.]

53-652. Issuance of registration. [I.C., § 53-652, as added by 1993, ch. 224, § 1, p. 760.]

53-653. Name of foreign limited liability company. [I.C., § 53-653, as added by 1993, ch. 224, § 1, p. 760.]

53-654. Amendments. [I.C., § 53-654, as added by 1993, ch. 224, § 1, p. 760.]

53-655. Voluntary cancellation of registration. [I.C., § 53-655, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 12, p. 916; am. 1998, ch. 268, § 13, p. 887; am. 2007, ch. 314, § 71, p. 887.]

53-655A. Administrative cancellation of registration. [I.C., § 53-655A, as added by 1998, ch. 268, § 14, p. 887; am. 2007, ch. 314, § 72, p. 887.]

53-655B. Procedure for and effect of administrative cancellation. [I.C., § 53-655B, as added by 1998, ch. 268, § 15, p. 887; am. 2007, ch. 314, § 73, p. 887.]

53-655C. Appeal from administrative cancellation. [I.C., § 53-655C, as added by 1998, ch. 268, § 16, p. 887.]

53-656. Transaction of business without registration. [I.C., § 53-656, as added by 1993, ch. 224, § 1, p. 760.]

53-657. Transactions not constituting transacting business. [I.C., § 53-657, as added by 1993, ch. 224, § 1, p. 760.]

53-658. Suits by and against the limited liability company. [I.C., § 53-658, as added by 1993, ch. 224, § 1, p. 760.]

53-659. Authority to sue on behalf of limited liability company. [I.C., § 53-659, as added by 1993, ch. 224, § 1, p. 760.]

53-660. Effect of lack of authority to sue. [I.C., § 53-660, as added by 1993, ch. 224, § 1, p. 760.]

53-660A. Applicability of Idaho entity transactions act. [I.C., § 53-660A, as added by 2007, ch. 116, § 11, p. 333.]

53-661. Merger or consolidation. [I.C., § 53-661, as added by 1993, ch. 224, § 1, p. 760.]

53-662. Approval of merger or consolidation. [I.C., § 53-662, as added by 1993, ch. 224, § 1, p. 760.]

53-663. Articles of merger or consolidation. [I.C., § 53-663, as added by 1993, ch. 224, § 1, p. 760.]

53-664. Effects of merger or consolidation. [I.C., § 53-664, as added by 1993, ch. 224, § 1, p. 760.]

53-665. Filing, service, and copying fees. [I.C., § 53-665, as added by 1993, ch. 224, § 1, p. 760; am. 1994, ch. 293, § 13, p. 916; am. 1998, ch. 268, § 17, p. 887.]

53-666. Execution by judicial act. [I.C., § 53-666, as added by 1993, ch. 224, § 1, p. 760.]

53-667. Definition of knowledge. [I.C., § 53-667, as added by 1993, ch. 224, § 1, p. 760.]

53-668. Rules of construction. [I.C., § 53-668, as added by 1993, ch. 224, § 1, p. 760.]

53-669. Jurisdiction of the district courts. [I.C., § 53-669, as added by 1993, ch. 224, § 1, p. 760.]

53-670. Severability. [I.C., § 53-670, as added by 1993, ch. 224, § 1, p. 760.]

53-671. Interstate application. [I.C., § 53-671, as added by 1993, ch. 224, § 1, p. 760.]

53-672. Governing law. [I.C., § 53-672, as added by 1993, ch. 224, § 1, p. 760.]



Chapter 7  
UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION  
ACT

Sec.

53-701 — 53-717. [Repealed.]

**§ 53-701. Definitions. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-102.

**History.**

I.C., § 53-701, as added by 1993, ch. 282, § 1, p. 952.



**§ 53-702. Supplementary general principles of law and equity.  
[Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-21-702.

**History.**

**I.C., § 53-702**, as added by 1993, ch. 282, § 1, p. 952.

Idaho Code § 53-703

**§ 53-703. Territorial application. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015.

**History.**

I.C., § 53-703, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-704. Real and personal property — Nonprofit association as legatee, devisee or beneficiary. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-106.

**History.**

**I.C., § 53-704**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-705. Statement of authority as to real property. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-107.

**History.**

**I.C., § 53-705**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-706. Liability in contract and tort. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-108.

**History.**

I.C., § 53-706, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-707. Capacity to assert and defend — Standing. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-109.

**History.**

**I.C., § 53-707**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-708. Effect of judgment or order. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-110.

**History.**

**I.C., § 53-708**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-709. Disposition of personal property of inactive nonprofit association. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015.

**History.**

**I.C., § 53-709**, as added by 1993, ch. 282, § 1, p. 952.



**§ 53-710. Appointment of agent to receive service of process.  
[Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-129.

**History.**

**I.C., § 53-710**, as added by 1993, ch. 282, § 1, p. 952; am. 2007, ch. 314, § 74, p. 887.

Idaho Code § 53-711

**§ 53-711. Claim not abated by change of members or officers.  
[Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-112.

**History.**

**I.C., § 53-711**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-712. Venue. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-113.

**History.**

**I.C., § 53-712**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-713. Uniformity of application and construction. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-21-703.

**History.**

**I.C., § 53-713**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-714. Short title. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-101.

**History.**

I.C., § 53-714, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-715. Effect of chapter upon other laws. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-103.

**History.**

I.C., § 53-715, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-716. Transition concerning real and personal property.  
[Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-27-130.

**History.**

**I.C., § 53-716**, as added by 1993, ch. 282, § 1, p. 952.

**§ 53-717. Savings clause. [Repealed.]**

Repealed by S.L. 2015, ch. 251, § 4, effective July 1, 2015. For present comparable provisions, see § 30-21-705.

**History.**

I.C., § 53-717, as added by 1993, ch. 282, § 1, p. 952.



# Table of Contents

Prefatory Material	2
Title Page	2
Copyright Page	4
Terms of Use	5
User's Guide	7
Adjournment Dates of Sessions of Legislature	8
<b>TITLE 50 MUNICIPAL CORPORATIONS</b>	<b>13</b>
Chapter 1 MANNER OF ORIGINAL INCORPORATION — ORGANIZATION	14
§ 50-101. Incorporation.	16
§ 50-102. Manner of incorporating.	21
§ 50-103. Census.	23
§ 50-104. Proof of corporate existence.	24
Chapter 2 GENERAL PROVISIONS — GOVERNMENT — TERRITORY	25
§ 50-201. Proof of corporate existence — Effect of this act.	28
§ 50-202. Existing rights and liabilities not affected — Operation of prior incorporated cities and villages.	30
§ 50-203. Officials — Compensation.	32
§ 50-204. Appointment of officers — Oath — Bond.	33
§ 50-205. Refusal to confirm appointments — Vacancies.	35
§ 50-206. Removal of appointive officers.	36
§ 50-207. Duties of the clerk — Journal — Administering oaths.	37
§ 50-208. Duties of treasurer — Record of outstanding bonds.	39
§ 50-208A. Duties of city attorney.	41
§ 50-209. Powers of policemen.	43
§ 50-210. Boards — Commissions.	47

§ 50-211. Supervision of elections. [Repealed.]	48
§ 50-212. Official depository. [Repealed.]	49
§ 50-213. Official newspaper.	50
§ 50-214. Census authorized.	51
§ 50-215. Prosecutions against corporations under city ordinance.	52
§ 50-216. Compelling attendance of witnesses before council.	53
§ 50-217. Payment of judgments.	54
§ 50-218. Prohibition against recognition of invalid or stale claims.	55
§ 50-219. Damage claims.	56
§ 50-220. Acquisition and control of lands outside corporate limits — Purpose.	62
§ 50-221. Cities situated on navigable lakes and streams — Extension of boundaries into waters.	63
§ 50-222. Annexation by cities.	64
§ 50-222A. Annexation of noncontiguous territory. [Repealed].	80
§ 50-223. Annexation ordinance to be filed.	81
§ 50-224. Effect of annexation — Cemetery districts exempted.	83
§ 50-225. Exclusion of territory.	85
§ 50-226. Separation of agricultural lands — Petition.	86
§ 50-227. Separation of agricultural lands — Notice of petition and hearing thereon.	88
§ 50-228. Separation of agricultural lands — Reply to protests — Verification.	90
§ 50-229. Separation of agricultural lands — Hearing.	91
§ 50-230. Separation of agricultural lands — Judgment of separation.	93
§ 50-231. Separation of agricultural lands — Liability for bonded indebtedness.	97

§ 50-232. Separation of agricultural lands — Streets not affected by separation.	98
§ 50-233. Separation of agricultural lands — Appeal.	99
§ 50-234. Lease of mining property by city.	100
§ 50-235. Tax levy for general and special purposes.	101
§ 50-236. Capital improvement fund levy — Limitations.	103
§ 50-237. Borrow money.	104
Chapter 3 POWERS	105
§ 50-301. Corporate and local self-government powers.	108
§ 50-302. Promotion of general welfare — Prescribing penalties.	113
§ 50-302A. Confinement in city or county jail for violating ordinance.	117
§ 50-303. Recreation and culture.	119
§ 50-304. Preservation of public health.	120
§ 50-305. Hospitals — Maintenance.	121
§ 50-306. Public carriers.	123
§ 50-307. License occupations and businesses.	126
§ 50-308. Maintenance of peace — Licensing and regulating amusements.	127
§ 50-309. Fire department — Fire zones.	128
§ 50-310. Hazardous materials.	131
§ 50-311. Creation — Vacation of streets — Eminent domain — Reversion of vacated streets.	132
§ 50-312. Improvement of streets — Special levy.	142
§ 50-313. Public ways — Supervision.	144
§ 50-314. Streets and public places — Regulations.	151
§ 50-315. Rehabilitation improvements.	154
§ 50-316. Sidewalks — General regulations.	155
§ 50-317. Removal of snow, ice, rubbish and weeds.	156
§ 50-318. Identification of streets and houses.	158
§ 50-319. Animals at large — Regulation.	159

§ 50-320. Cemeteries.	160
§ 50-321. Aviation facilities — Acquisition, operation and maintenance.	163
§ 50-322. Transit systems.	166
§ 50-323. Domestic water systems.	167
§ 50-324. Cities authorized to jointly purchase or lease, maintain or operate a joint water system.	169
§ 50-325. Power plants — Power distribution.	170
§ 50-326. Water, light, power and gas plants — Leasing — Selling — Procedure.	173
§ 50-327. Sale of excess power.	174
§ 50-328. Utility transmission systems — Regulations.	175
§ 50-329. Franchise ordinances — Regulations.	176
§ 50-329A. Franchise ordinances — Fees.	178
§ 50-330. Rates of franchise holders — Regulations.	181
§ 50-331. Control of waters.	182
§ 50-332. Control of sewers and drains.	183
§ 50-333. Flood prevention — Drainage.	185
§ 50-334. Abatement of nuisances.	186
§ 50-335. Destruction of buildings inimical to safety and health.	188
§ 50-336. Traffic safety education program — Fees.	190
§ 50-337 — 50-340. Joint service functions. [Repealed.]	193
§ 50-341. Competitive bidding — Application of law. [Repealed.]	194
§ 50-342. Electric power — Purchase or disposal.	195
§ 50-342A. Participation in generation and transmission projects.	197
§ 50-343. Regulation of firearms — Control by state. [Repealed.]	201
§ 50-344. Solid waste disposal.	202
§ 50-345. Computerized mapping system fees.	204
Chapter 4 MUNICIPAL ELECTIONS	205

§ 50-401. Short title.	210
§ 50-402. Definitions.	211
§ 50-403. Supervision of administration of election laws by county clerk.	214
§ 50-404. Registration of electors.	215
§ 50-405. General and special city elections.	216
§ 50-406. Method of nomination — Clerk to furnish printed forms.	219
§ 50-407. Form of declaration of candidacy.	221
§ 50-408. Designation of polling places. [Repealed.]	224
§ 50-409. Appointment of election judges and clerks. [Repealed.]	225
§ 50-410. Time and manner of filing declarations.	226
§ 50-411. Notice of candidate filing deadline.	228
§ 50-412. Canvassing votes — Determining results of election.	229
§ 50-413. Tie votes.	231
§ 50-414. Failure to qualify creates vacancy.	232
§ 50-415. Certificates of elections.	234
§ 50-416. Application for recount of ballots.	235
§ 50-417. Recall elections.	236
§ 50-418. Initiative and referendum elections.	237
§ 50-419. Election law violations.	238
§ 50-420. Application of campaign reporting law to elections in certain cities. [Repealed.]	239
§ 50-421. Qualifications for registration. [Repealed.]	240
§ 50-422. Reregistration of elector who changes residence. [Repealed.]	241
§ 50-423, 50-424. Registration cards — Registration — When required. [Repealed.]	242
§ 50-425. Affidavit voting of elector who moves to another precinct. [Repealed.]	243
§ 50-426. Change of name — Voting. [Repealed.]	244

§ 50-427. Challenges of entries in combination election record and poll book. [Repealed]	245
§ 50-428. Combination election record and poll book. [Repealed.]	246
§ 50-429. General and special city elections. [Amended and Redesignated.]	247
§ 50-430. Method of nomination — Clerk to furnish printed forms. [Amended and Redesignated.]	248
§ 50-431. Form of declaration of candidacy. [Amended and Redesignated.]	249
§ 50-432. Time and manner of filing declarations. [Amended and Redesignated.]	250
§ 50-433 — 50-434. Signatures on nominating petitions — Revocation of signature. [Repealed.]	251
§ 50-435. Notice of candidate filing deadline. [Amended and Redesignated.]	252
§ 50-436. Notice of election — Contents — Publication. [Repealed.]	253
§ 50-437. Official election stamp. [Repealed.]	254
§ 50-438. Ballots and election supplies. [Repealed.]	255
§ 50-439. Preparation and contents of ballot. [Repealed.]	256
§ 50-440. Sample ballots. [Repealed.]	257
§ 50-441. Procedure for correction of ballots after printing. [Repealed.]	258
§ 50-442. Voting by absentee ballot authorized. [Repealed.]	259
§ 50-443. Application for absentee ballot. [Repealed.]	260
§ 50-444. Classifications for absent elector's ballot. [Repealed.]	261
§ 50-445. Issuance of absentee ballot. [Repealed.]	262
§ 50-446. Marking and folding of absentee ballot — Affidavit. [Repealed.]	263
§ 50-447. Return of absentee ballot. [Repealed.]	264
§ 50-448. City clerks shall provide an absent elector's voting place. [Repealed.]	265

§ 50-449. Transmission of absentee ballots to polls. [Repealed.]	266
§ 50-450. Deposit of absentee ballots. [Repealed.]	267
§ 50-451. Record of applications for absentee ballots. [Repealed.]	268
§ 50-452. Duties of city clerk on election day. [Repealed.]	269
§ 50-453. Opening and closing polls. [Repealed.]	270
§ 50-454. Changing polling place — Proclamation and notice. [Repealed.]	271
§ 50-455. Opening ballot boxes. [Repealed.]	272
§ 50-456. Judges may administer oaths — Challenge of voters. [Repealed.]	273
§ 50-457. Enforcement duties of judge. [Repealed.]	274
§ 50-458. Signing combination election record and poll book — Delivery of ballot to elector. [Repealed.]	275
§ 50-459. Manner of voting. [Repealed.]	276
§ 50-460. Assistance to voter. [Repealed.]	277
§ 50-461. Spoiled ballots. [Repealed.]	278
§ 50-462. Officers not to divulge information. [Repealed.]	279
§ 50-463. Counting of votes. [Repealed.]	280
§ 50-464. Comparison of poll lists and ballots — Void ballots. [Repealed.]	281
§ 50-465. Counting of ballots. [Repealed.]	282
§ 50-466. Transmission of supplies to city clerk. [Repealed.]	283
§ 50-467. Canvassing votes — Determining results of election. [Amended and Redesignated.]	284
§ 50-468. Tie votes. [Amended and Redesignated.]	285
§ 50-469. Failure to qualify creates vacancy. [Amended and Redesignated.]	286
§ 50-470. Certificates of elections. [Amended and Redesignated.]	287
§ 50-471. Application for recount of ballots. [Amended and Redesignated.]	288

§ 50-472. Recall elections. [Amended and Redesignated.]	289
§ 50-473. Initiative and referendum elections. [Amended and Redesignated.]	290
§ 50-474. Voting by machine or vote tally system. [Repealed.]	291
§ 50-475. Election law violations. [Amended and Redesignated.]	292
§ 50-476. Adoption of state registration procedures — Joint registration. [Repealed.]	293
§ 50-477. Application of campaign reporting law to elections in certain cities. [Amended and Redesignated.]	294
§ 50-478. Limitation of ballot access for multi-term incumbents. [Repealed.]	295
§ 50-479. Application of persuasive poll requirements. [Repealed.]	296
Chapter 5 INITIATIVE — REFERENDUM — RECALL	297
§ 50-501. Initiative and referendum. [Repealed.]	299
§ 50-502 — 50-517. Recall of officers. [Repealed.]	300
Chapter 6 MAYOR	301
§ 50-601. Qualifications.	303
§ 50-602. Mayor, administrative official.	304
§ 50-603. Messages to council.	305
§ 50-604. Special meetings of council.	306
§ 50-605. Accounts and reports of officers.	307
§ 50-606. Police powers of mayor.	308
§ 50-607. General powers.	309
§ 50-608. Vacancy in office of mayor.	310
§ 50-609. Mayor may require aid in enforcing law.	311
§ 50-610. Remission of fines. [Repealed.]	312
§ 50-611. Veto power.	313
§ 50-612. Majority required for election — Runoff election.	314
Chapter 7 COUNCIL	316
§ 50-701. Composition — Powers.	318



§ 50-702. Qualification of councilmen — Terms — Installation.	320
§ 50-703. Change in number of councilmen.	321
§ 50-704. Vacancies — Appointment.	323
§ 50-705. Meetings of council — Quorum — Discipline.	324
§ 50-706. Special meetings of council.	325
§ 50-707. Assignment of council seats.	327
§ 50-707A. Election of councilmen by districts.	328
§ 50-707B. Majority may be required for election — Runoff election.	330
§ 50-708. Examination of accounts of fiscal officers.	332
Chapter 8 COUNCIL-MANAGER PLAN	333
§ 50-801. Cities may adopt plan.	335
§ 50-802. Instituting election, petition — Resolution.	336
§ 50-803. Time for holding special election on proposition.	337
§ 50-804. Proposition to be voted.	338
§ 50-805. Governing body — Size.	339
§ 50-806. Election of officials following adoption — Determining successful candidates — Designation of seats.	340
§ 50-807. Effective date following adoption of plan.	342
§ 50-808. Powers — Duties of the council.	343
§ 50-809. Mayor.	344
§ 50-810. Powers of the mayor.	345
§ 50-811. City manager — Duties.	346
§ 50-812. Discontinuance of council-manager plan — Proposition to be voted.	348
§ 50-813. Calculation for number of required signatures.	349
Chapter 9 ORDINANCES — CITY CODE — RECORDS	350
§ 50-901. Ordinances — Style — Publication — When effective — Immediate operation in emergencies.	352
§ 50-901A. Summarization of ordinances permitted — Requirements.	355
§ 50-902. Passage of ordinances.	357

§ 50-903. Grant of power.	360
§ 50-904. Arrangement of ordinances.	361
§ 50-905. Repeal of conflicting provisions.	362
§ 50-906. Publication in book or pamphlet form.	363
§ 50-907. Classification and retention of municipal records.	364
§ 50-908. Designation, powers and responsibilities of municipal records management officers — Duties of city officials concerning records.	369
§ 50-909. Retention of city records using photographic and digital media. [Repealed.]	371
§ 50-910. Photographic or digital retention of city records. [Repealed.]	372
Chapter 10 FINANCES	373
§ 50-1001. Fiscal year.	377
§ 50-1002. Annual budget.	379
§ 50-1003. Annual appropriations bill — Amending appropriation ordinance — Special appropriation upon petition or election.	382
§ 50-1004. Special tax assessment — Warrant redemption fund.	386
§ 50-1005. Expenses not to precede appropriation — Interim ordinance. [Repealed.]	388
§ 50-1005A. Accumulation of fund balances.	389
§ 50-1006. Expenditures not to exceed appropriation — Exceptions.	390
§ 50-1007. Certification and collection of city taxes.	394
§ 50-1008. Collection of special assessments — Certification to tax collector — Widow's exemption.	398
§ 50-1009. Payment by tax collector to city treasurer. [Repealed.]	399
§ 50-1010. Audit of city finances — Audit to be filed.	400
§ 50-1011. Publication of financial statements — Noncompliance.	402

§ 50-1012. Accounting system. [Repealed.]	403
§ 50-1013. Deposit and investment of funds.	404
§ 50-1013A. Investment of deposits of deferred compensation plans.	408
§ 50-1014. Transfer of funds.	409
§ 50-1015. Disposition of license fees and fines.	410
§ 50-1015A. Disposition of parking fees and fines.	411
§ 50-1016. Deductions from wages.	412
§ 50-1017. Presentation of claims.	413
§ 50-1018. Payment of claims.	415
§ 50-1019. Purposes for which bonds may be issued — Limitation on amount.	416
§ 50-1020. Waterworks — Light and power plants — Sewerage systems.	421
§ 50-1021. Previous issues validated.	423
§ 50-1022. Joint services.	424
§ 50-1023. Joint services — Agreement on apportionment.	425
§ 50-1024. Joint services — Bond election in each city.	426
§ 50-1025. Joint services — Committee for construction or purchase.	427
§ 50-1026. City bonds — Ordinance — Election.	428
§ 50-1026A. City bonds — Pledge of revenues.	434
§ 50-1027. Revenue bonds — Short title.	437
§ 50-1028. Grant of authority.	439
§ 50-1029. Definitions.	441
§ 50-1030. Powers.	444
§ 50-1031. Supervision of projects.	451
§ 50-1032. Projects to be self-supporting.	452
§ 50-1033. Use of projects — Revenue.	455
§ 50-1034. Preliminary expenses.	458
§ 50-1035. Ordinance prior to construction — Election.	459
§ 50-1035A. Issuance of revenue bonds at rates of interest in	463

excess of original specification.	
§ 50-1036. Bonds — Form — Conditions — Bond anticipation notes.	464
§ 50-1037. Bonds — Issuance — Terms — Conditions.	468
§ 50-1038. Validity of bonds.	470
§ 50-1039. Lien of bonds.	471
§ 50-1040. City not liable on bonds.	473
§ 50-1041. Tax levy to pay bonds prohibited.	474
§ 50-1042. Projects and bonds exempt from taxation.	475
§ 50-1043. Short title.	476
§ 50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement and collect certain city nonproperty taxes.	477
§ 50-1045. City property tax relief fund.	479
§ 50-1046. City local-option nonproperty taxes permitted by sixty per cent majority vote.	480
§ 50-1047. General provisions.	482
§ 50-1048. Coordination with county local-option nonproperty taxes.	484
§ 50-1049. Collection and administration of local-option nonproperty taxes by state tax commission — Distribution.	485
Chapter 11 PLANNING COMMISSIONS	487
§ 50-1101 — 50-1106. [Repealed.]	489
Chapter 12 ZONING	490
§ 50-1201 — 50-1210. [Repealed.]	492
Chapter 13 PLATS AND VACATIONS	493
§ 50-1301. Definitions.	496
§ 50-1302. Duty to file.	501
§ 50-1303. Survey — Monuments — Accuracy.	503
§ 50-1304. Essentials of plats.	505
§ 50-1305. Verification.	508
§ 50-1306. Extraterritorial effects of subdivision — Property within the area of city impact — Rights of city to comment.	509

§ 50-1306A. Vacation of plats — Procedure.	511
§ 50-1307. Designation of townsite and addition — Necessity of distinctiveness — Limitations on rule.	514
§ 50-1308. Approvals.	515
§ 50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads.	517
§ 50-1310. Filing and recording — Record of plats — Filing of copy.	520
§ 50-1311. Indexing of plat records.	522
§ 50-1312. Effect of acknowledging and recording plat.	523
§ 50-1313. Dedication must be accepted.	527
§ 50-1314. Enforcing execution of plat — Assessment of costs.	530
§ 50-1315. Existing plats validated.	532
§ 50-1316. Penalty for selling unplatted lots.	534
§ 50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing.	535
§ 50-1318. In absence of opposition — Grant of petition — Restrictions.	537
§ 50-1319. In presence of opposition — Continuance of application — Hearing — When petition granted.	538
§ 50-1320. Vesting of title on vacation.	539
§ 50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limitation on rule — Prerequisites to order of vacation.	540
§ 50-1322. Appeal from order granting or denying application to vacate.	541
§ 50-1323. Limitation of actions to establish adverse rights or question validity of vacation.	542
§ 50-1324. Recording vacations.	543
§ 50-1325. Easements — Vacation of.	544
§ 50-1326. All plats to bear a sanitary restriction —	545

Submission of plans and specifications of water and sewage systems to state department of environmental quality — Removal or reimposition of sanitary restriction.	
§ 50-1327. Filing or recording of noncomplying map or plat prohibited.	547
§ 50-1328. Rules for the administration and enforcement of sanitary restriction.	548
§ 50-1329. Violation a misdemeanor.	549
§ 50-1330. Jurisdiction of public streets and public rights of way within a highway district.	550
§ 50-1331. Setting of interior monuments for a subdivision.	552
§ 50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work.	553
§ 50-1333. Recording of plats with only exterior monuments referenced.	555
§ 50-1334. Review of water systems encompassed by plats.	556
Chapter 14 CONVEYANCE OF PROPERTY	558
§ 50-1401. Real property owned by cities — Method of conveyance or exchange.	560
§ 50-1402. Declaration of value of property.	562
§ 50-1403. Disposition after hearing.	563
§ 50-1404. Terms of sale.	565
§ 50-1405. Conveyance — Disposition of proceeds.	566
§ 50-1406. Disposal of land acquired by foreclosure — Excess proceeds.	567
§ 50-1407. Leases.	568
§ 50-1408. Disposal of land acquired by foreclosure — Excess proceeds.	569
§ 50-1409. Leases.	570
Chapter 15 POLICEMAN'S RETIREMENT FUND	572
§ 50-1501. Purpose stated.	575

§ 50-1502. Definitions.	576
§ 50-1503. Establishment of retirement fund.	579
§ 50-1504. Board of police retirement fund commissioners — Election — Term of office — Duties.	580
§ 50-1505. Policeman's retirement fund.	582
§ 50-1506. Appropriation of fund.	583
§ 50-1507. Administration of fund.	584
§ 50-1508. Actions by and against board.	585
§ 50-1509. Employees of board.	586
§ 50-1510. Personal liability of board members or their employees.	587
§ 50-1511. Audit of claims.	588
§ 50-1512. Tax levy — Salary deductions.	589
§ 50-1513. Chairman of board — Secretaries — Reports.	590
§ 50-1514. Retirement of policemen — Retirement benefits — Leave of absence.	591
§ 50-1515. Resignation of policemen — Refund of deductions.	594
§ 50-1516. Retirement for disability — Death benefits — Funeral benefits.	595
§ 50-1517. Benefits exempt from legal process.	599
§ 50-1518. Construction of statute.	600
§ 50-1519. Rotary expense fund.	601
§ 50-1520. Insurance of risks.	602
§ 50-1521. Application of statute.	603
§ 50-1522. Separability.	604
§ 50-1523. False claims — Penalty.	605
§ 50-1524. Authority to create policeman's retirement fund terminated.	606
§ 50-1525. Mandatory actuarial study.	608
§ 50-1526. Making a false claim — Misdemeanor.	609
Chapter 16 CIVIL SERVICE	610
§ 50-1601. Civil service commission — Appointment —	612

Qualifications — Manner of abolishing commission.	
§ 50-1602. Departments governed by civil service — Classified civil service lists.	614
§ 50-1603. Rules by commission.	615
§ 50-1604. Examinations — Qualifications of applicants — Rehires — Causes for removal, discharge or suspension of incumbents.	616
§ 50-1605. Appointment to positions — Certificate of eligibles — Reexamination.	619
§ 50-1606. Promotion for merit.	620
§ 50-1607. Employees of six months when ordinance becomes effective.	621
§ 50-1608. Temporary appointments.	622
§ 50-1609. Removals — Suspensions — Appeals — Hearings.	623
§ 50-1610. Removals due to reduction of force.	626
Chapter 17 LOCAL IMPROVEMENT DISTRICT CODE — GUARANTEE FUND	627
§ 50-1701. Short title.	631
§ 50-1702. Definitions.	634
§ 50-1703. Powers conferred.	636
§ 50-1703A. Local business improvement districts.	639
§ 50-1704. Improvements on railroad tracks or on one side of a street.	641
§ 50-1705. Modified district.	642
§ 50-1706. Initiation of organization of district.	643
§ 50-1706A. Fees.	644
§ 50-1707. Resolution of intention to create district.	645
§ 50-1708. Notice of intention and hearing.	653
§ 50-1709. Protests and hearing.	655
§ 50-1710. Ordinance creating improvement district and procedure for construction bids.	658
§ 50-1711. Limitation on assessments against property.	663



§ 50-1712. Preparation of assessment roll and notice of hearing thereon.	664
§ 50-1713. Notice of hearing on assessment roll.	669
§ 50-1714. Hearing objections to assessment roll and confirmation.	671
§ 50-1715. Confirmation of assessment roll.	672
§ 50-1716. Notice and payment of assessments.	678
§ 50-1717. Installment docket.	679
§ 50-1718. Appeal procedure — Exclusive remedy.	680
§ 50-1719. Additional improvements.	683
§ 50-1720. Reassessment of benefits.	684
§ 50-1721. Lien of assessment — Foreclosure.	689
§ 50-1721A. Segregation of assessments.	695
§ 50-1722. Bonds — Registered warrants — Interim warrants.	696
§ 50-1723. Liability of municipality.	700
§ 50-1724. Bond and interest funds.	704
§ 50-1725. Reissue of bonds.	707
§ 50-1726. Rights against assessments.	708
§ 50-1727. Publication and conclusiveness of proceedings.	710
§ 50-1728. Consolidated local improvement districts authorized.	713
§ 50-1729 — 50-1737. Assessments — Bonds. [Repealed.]	714
§ 50-1738. Delinquent installments.	715
§ 50-1739. Delinquent certificates.	716
§ 50-1740. Delinquent certificate register.	718
§ 50-1741. Assignment of delinquent certificates.	719
§ 50-1742. Form of assignment — Assignment by purchaser.	720
§ 50-1743. Redemption.	722
§ 50-1744. Deed.	724
§ 50-1745. Notice of expiration of time of redemption.	725
§ 50-1746. Proof of notice.	726

§ 50-1747. Effect of deed as evidence.	727
§ 50-1748. Delinquency certificate for subsequent instalments.	728
§ 50-1749. Fees of treasurer.	729
§ 50-1750. Suit to quiet title.	730
§ 50-1751. Sale of property deeded to municipality.	731
§ 50-1752. Sale of property after maturity of bonds.	733
§ 50-1753. Disposition of funds.	734
§ 50-1754. Delinquent certificate not assignable during pendency of action.	735
§ 50-1755. Duties of officers.	736
§ 50-1756 — 50-1761. Prior districts — Construction — Separability — Validation — Limitation on assessments. [Repealed.]	737
§ 50-1762. Local improvement guarantee fund — Creation of fund.	738
§ 50-1763. Bonds, warrants and coupons, when paid out of fund — Nonpayment for want of funds — Interest.	739
§ 50-1764. Subrogation of municipality to rights of payee — Surplus funds — Payment into fund — Preferences.	740
§ 50-1765. Maintenance and operation and sources of fund.	741
§ 50-1766. Replenishment of fund — Warrants — Issuance against fund — Tax levy.	742
§ 50-1767. Bonds and warrants — Revenues from which payable.	743
§ 50-1768. Bonds payable from fund.	744
§ 50-1769. Excess in fund — Disposition.	745
§ 50-1770. Unpatented lands — Assessment for improvements.	746
§ 50-1771. Reserve fund authorized.	747
§ 50-1772. Commercially reasonable credit assurances.	748
Chapter 18 CITY IRRIGATION SYSTEMS	749
§ 50-1801. City irrigation system authorized.	752

§ 50-1802. City control — Petition.	753
§ 50-1803. Assignment of water stock to city.	754
§ 50-1804. City water certificate.	755
§ 50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments.	756
§ 50-1805A. Pooling of water rights for delivery — Uniform method of allocation of assessments and charges — Allocation and accounting for bonded or contract indebtedness.	758
§ 50-1806. Apportionment of costs.	759
§ 50-1807. Levying of annual assessments to defray operating and maintenance costs.	760
§ 50-1808. Issuance of coupon bonds.	762
§ 50-1809. Control of ditches.	763
§ 50-1810. Power of city to prescribe penalties for interference.	764
§ 50-1811. Board of correction — Changes in assessment books.	765
§ 50-1812. Correction of irregularities upon giving notice — Omissions.	766
§ 50-1813. Assessments as prior liens.	767
§ 50-1814. Notice of time assessments become due — Apportionment of assessments.	768
§ 50-1815. Entry of delinquent assessments and penalties — Amounts of penalty and interest.	769
§ 50-1816. Certificate showing amount of collections and delinquencies.	770
§ 50-1817. Compilation of alphabetical list of delinquencies.	771
§ 50-1818. Certified copy of delinquency list filed — Fee.	772
§ 50-1819. Redemption of lands.	773
§ 50-1820. Unredeemed property deeded to city.	774
§ 50-1821. Notice of pending tax deed.	775
§ 50-1822. Affidavit of compliance by treasurer.	777

§ 50-1823. Tax deed — Form and contents — Title conveyed.	778
§ 50-1824. Deed prima facie evidence of regularity.	781
§ 50-1825. Deed to city — Recitals and form.	782
§ 50-1826. Sale of land by city.	783
§ 50-1827. Payment of state and county taxes by city — Repayment upon redemption — Sale by county for taxes.	784
§ 50-1828. Disposal of funds from sales.	785
§ 50-1829. Action to quiet title against or test validity of assessment — Tender.	786
§ 50-1830. Assessment of city irrigation systems by irrigation district.	787
§ 50-1831. Adjustment and settlement of accounts with irrigation system in operation.	788
§ 50-1832. Ordinances or resolutions establishing boundaries.	789
§ 50-1833. Diversion works for city irrigation system.	790
§ 50-1834. Manner of acquiring or establishing city irrigation system — Power of cities.	791
§ 50-1835. Separability.	792
<b>Chapter 19 HOUSING AUTHORITIES AND COOPERATION LAW</b>	<b>793</b>
§ 50-1901. Short title.	796
§ 50-1902. Finding and declaration of necessity.	797
§ 50-1903. Definitions.	798
§ 50-1904. Powers of authority.	801
§ 50-1905. Creation of housing authorities.	805
§ 50-1906. Termination of housing authority.	807
§ 50-1907. Cooperation in undertaking housing projects.	808
§ 50-1908. Tax exemptions and payments in lieu of taxes.	810
§ 50-1909. Donations to housing authority.	811
§ 50-1910. Appointment, qualifications and tenure of commissioners.	812

§ 50-1911. Removal of commissioners.	814
§ 50-1912. Operation not for profit.	815
§ 50-1913. Rentals and tenant selection.	816
§ 50-1914. Eminent domain.	817
§ 50-1915. Planning, zoning and building laws.	818
§ 50-1916. Bonds.	819
§ 50-1917. Form and sale of bonds.	821
§ 50-1918. Provisions of bonds and trust indentures.	823
§ 50-1919. Certificate of attorney general. [Repealed.]	826
§ 50-1920. Remedies of an obligee of authority.	827
§ 50-1921. Filing of minutes of meetings and reports.	828
§ 50-1922. Exemption of property from execution sale.	829
§ 50-1923. Aid from federal government.	830
§ 50-1924. Construction of powers conferred.	831
§ 50-1925. Additional remedies conferrable by authority.	832
§ 50-1926. Separability.	833
§ 50-1927. Act controlling.	834
Chapter 20 URBAN RENEWAL LAW	835
§ 50-2001. Short title.	838
§ 50-2002. Findings and declarations of necessity.	840
§ 50-2003. Encouragement of private enterprise.	842
§ 50-2004. Workable program.	843
§ 50-2005. Finding of necessity by local governing body.	844
§ 50-2006. Urban renewal agency.	845
§ 50-2007. Powers.	852
§ 50-2008. Preparation and approval of plan for urban renewal project.	856
§ 50-2009. Neighborhood and community-wide plans.	860
§ 50-2010. Acquisition of property.	862
§ 50-2011. Disposal of property in urban renewal area.	864
§ 50-2012. Issuance of bonds.	868
§ 50-2013. Bonds as legal investments.	871

§ 50-2014. Property exempt from taxes and from levy and sale by virtue of an execution.	873
§ 50-2015. Cooperation by public bodies.	874
§ 50-2016. Title of purchaser.	878
§ 50-2017. Interested public officials, commissioners or employees.	879
§ 50-2018. Definitions.	880
§ 50-2019 — 50-2026. Revenue allocation — Procedures — Purposes. [Repealed.]	886
§ 50-2027. Limitations on review of adoption or modification of plan, and issuance of bonds.	887
§ 50-2028 — 50-2030. Revenue allocation termination — Effect of revenue allocation on other tax calculations — Urban renewal agency terminated. [Repealed.]	889
§ 50-2031. Severability.	890
§ 50-2032. Severability.	891
§ 50-2033. Amendments.	892
Chapter 21 CONSOLIDATION OF CITIES	894
§ 50-2101. Consolidation of cities.	896
§ 50-2102. Resolution for joint session of governing bodies.	897
§ 50-2103. Petition for consolidation.	898
§ 50-2104. Joint session — Resolution specifying time of election.	899
§ 50-2105. Submission of question to electors — election.	900
§ 50-2106. Results of election certified to secretary of state.	901
§ 50-2107. Election of officers of consolidated corporations.	902
§ 50-2108. Effective date.	903
§ 50-2109. New corporate successor to former corporations.	904
§ 50-2110. No property to be taxed for prior indebtedness.	905
§ 50-2111. Prior obligations or proceedings.	906
§ 50-2112. Effect of ordinances of consolidated cities.	907
§ 50-2113. Books of smaller city(ies) property of new city.	909
§ 50-2114. Expenses of consolidation.	910

Chapter 22 DISINCORPORATION PROCEDURE	911
§ 50-2201. Petition for disincorporation.	913
§ 50-2202. Election to determine question.	915
§ 50-2203. Canvass of vote.	916
§ 50-2204. Effect of negative vote.	917
§ 50-2205. Proceedings upon affirmative vote — Order of disincorporation.	918
§ 50-2206. Determination of indebtedness — Transmission of money and financial data.	919
§ 50-2207. Disposition of records.	920
§ 50-2208. Payment of indebtedness.	921
§ 50-2209. Collection and disposition of current tax levies.	922
§ 50-2210. Subsequent tax levies authorized.	923
§ 50-2211. Disposition of surplus funds.	924
§ 50-2212. County commissioners vested with power to close city affairs.	925
§ 50-2213. Payment of costs.	926
§ 50-2214. Affidavit to be filed.	927
Chapter 23 REORGANIZATION OF CITIES UNDER GENERAL LAWS	928
§ 50-2301. Cities organized under general incorporating act or special charter — Organization under general laws.	930
§ 50-2302. Petition for organization under general laws — Election.	931
§ 50-2303. Submission of proposition to electorate — Filing of certificates — Proclamation of governor.	932
§ 50-2304. Governing body to continue in office.	933
§ 50-2305. Effect of election — Officials.	934
§ 50-2306. Proof of corporate existence.	935
§ 50-2307. Existing rights not affected.	936
§ 50-2308. Election of officers.	938
Chapter 24 POLICE COURTS	939
§ 50-2401 — 50-2419. Jurisdiction — Hearings —	941

Judgments — Governing Laws — Appeals. [Repealed.]	
Chapter 25 UNDERGROUND CONVERSION OF UTILITIES	942
§ 50-2501. Short title.	945
§ 50-2502. Definitions.	946
§ 50-2503. Powers conferred.	948
§ 50-2504. Basis of assessments.	949
§ 50-2505. Resolution for cost and feasibility study.	950
§ 50-2506. Costs and feasibility report.	951
§ 50-2507. Resolution declaring intention to create district.	952
§ 50-2508. Notice of resolution and hearing on protests — Contents.	953
§ 50-2509. Filing and hearing of protests and requests for inclusion. — At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvement, or the creation of such district, or the benefits to be derived by the real property in the district, and any property owner desiring to be included in such district may make a written request for inclusion. Such protests or requests must be in writing and be delivered to the clerk of the governing body not later than 5 p.m. of the last day within said period.	955
§ 50-2510. Changes in proposed improvements or in area of district — Ordinance creating improvement district.	956
§ 50-2511. Waiver of objections.	957
§ 50-2512. Notice of hearing on objections to proposed assessments.	958
§ 50-2513. Incorporation of assessment and bonding provisions from chapter 17, title 50, Idaho Code.	960
§ 50-2514. Civil actions — Incorporation of sections 50-1725 through 50-1727, inclusive — Statute of limitations.	961
§ 50-2515. Costs.	962
§ 50-2516. Construction of and title to extended or converted facilities.	964



§ 50-2517. Underground distribution extension or conversion costs and service connections.	965
§ 50-2518. Payment to public utility — Refunds.	966
§ 50-2519. Reinstallation of overhead facilities not permitted.	967
§ 50-2520. No limitation of public utilities commission's jurisdiction.	968
§ 50-2521. Reassessment of benefits.	969
§ 50-2522. Invalidity of one provision not to affect others — Exception.	970
§ 50-2523. Abatement of construction.	971
<b>Chapter 26 BUSINESS IMPROVEMENT DISTRICTS</b>	<b>972</b>
§ 50-2601. Authorization — Purposes — Special assessments.	975
§ 50-2602. Definitions.	976
§ 50-2603. Initiation petition — Contents.	977
§ 50-2604. Resolution of intention to establish — Contents — Hearing.	978
§ 50-2605. Notice of hearing.	979
§ 50-2606. Hearings.	980
§ 50-2607. Change of boundaries.	981
§ 50-2608. Special assessments — Classification of businesses.	982
§ 50-2609. Special assessments — Same basis or rate for classes not required — Factors as to parking facilities.	983
§ 50-2610. Ordinance to establish — Adoption — Contents.	984
§ 50-2611. Use of revenue — Contracts to administer operation of district.	985
§ 50-2612. Use of assessment proceeds restricted.	986
§ 50-2613. Collection of assessments.	987
§ 50-2614. Changes in assessment rates.	988
§ 50-2615. Benefit zones — Authorized — Rates.	989
§ 50-2616. Benefit zones — Establishment, modification and	990

disestablishment of district provisions and procedure to be followed.	
§ 50-2617. Exemption period for new businesses.	991
§ 50-2618. Disestablishment of district — Hearing.	992
§ 50-2619. Disestablishment of district — Assets and liabilities.	993
§ 50-2620. Bids required — Monetary amount.	994
§ 50-2621. Computing cost of improvement for bid requirement.	995
§ 50-2622. Existing laws not affected — Chapter supplemental — Purposes may be accomplished in conjunction with other methods.	996
§ 50-2623. Disclosure requirement prior to lease or sale of property.	997
§ 50-2624. Notification in the event of lease or sale.	998
Chapter 27 MUNICIPAL INDUSTRIAL DEVELOPMENT PROGRAM	999
§ 50-2701. Finding and declaration of necessity.	1002
§ 50-2702. Definitions.	1003
§ 50-2703. Public corporations — Creation, dissolution.	1006
§ 50-2704. Board of directors of a public corporation.	1008
§ 50-2705. Public corporations — Directors.	1009
§ 50-2706. Public corporations — Limitations.	1010
§ 50-2707. Public corporations — Audit by state.	1013
§ 50-2708. Public corporations — Powers.	1014
§ 50-2709. Reporting and assistance.	1017
§ 50-2710. Revenue bonds — Provisions.	1019
§ 50-2711. Investment of funds.	1022
§ 50-2712. Revenue bonds — Refunding.	1023
§ 50-2713. Trust agreements.	1025
§ 50-2714. Commingling of bond proceeds or revenues with municipal funds prohibited.	1027
§ 50-2715. Subleases and assignment.	1028

§ 50-2716. Determination of rent.	1029
§ 50-2717. Proceedings in the event of default.	1030
§ 50-2718. Publication of proceedings — Contest period.	1031
§ 50-2719. Tax exemption.	1032
§ 50-2720. Taxation.	1033
§ 50-2721. Bonds eligible for investment.	1034
§ 50-2722. Conveyance of title to user.	1035
§ 50-2723. Construction — Supplemental nature of chapter.	1036
Chapter 28 IDAHO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT	1037
§ 50-2801. Definitions.	1039
§ 50-2802. Finding and declaration of necessity.	1041
§ 50-2803. Allocation formula.	1042
§ 50-2804. Authority of the governor.	1043
§ 50-2805. Miscellaneous.	1044
Chapter 29 LOCAL ECONOMIC DEVELOPMENT ACT	1045
§ 50-2901. Short title.	1047
§ 50-2902. Findings and purpose.	1049
§ 50-2903. Definitions.	1050
§ 50-2903A. Effect of ordinance to modify urban renewal plan — Exception.	1058
§ 50-2904. Authority to create revenue allocation area.	1061
§ 50-2905. Recommendation of urban renewal agency.	1064
§ 50-2905A. Election necessary for expenditures on certain projects.	1066
§ 50-2906. Public hearing and ordinance required.	1068
§ 50-2907. Transmittal of revenue allocation area description and other documents to taxing agencies.	1071
§ 50-2908. Determination of tax levies — Creation of special fund.	1073
§ 50-2909. Issuance of bonds — Bond provisions.	1078
§ 50-2910. Bonds not general obligation of agency or municipality.	1081

§ 50-2911. Limitations on review.	1083
§ 50-2912. Severability.	1085
§ 50-2913. Urban renewal agency plans — Reporting information required — Penalties for failure to report.	1086
Chapter 30 IDAHO VIDEO SERVICE ACT	1090
§ 50-3001. Short title.	1092
§ 50-3002. Definitions.	1093
§ 50-3003. Franchising authority — Application for certificate of franchise authority — Modification of service areas — Term of certificate of franchise authority and termination thereof.	1096
§ 50-3004. Provision of access to video service within a certain period — Suspension of authority for noncompliance with certain requirements.	1101
§ 50-3005. Fees.	1102
§ 50-3006. Use of public rights-of-way by a holder of a certificate of franchise authority.	1103
§ 50-3007. Video service provider fee.	1106
§ 50-3008. Discrimination among potential residential subscribers prohibited — Violations.	1110
§ 50-3009. Customer service standards.	1112
§ 50-3010. Designation and use of channel capacity for public, educational or governmental use.	1113
§ 50-3011. Applicability of other law.	1117
Chapter 31 COMMUNITY INFRASTRUCTURE DISTRICT ACT	1119
§ 50-3101. Purpose, relationship with other laws and short title.	1121
§ 50-3102. Definitions.	1123
§ 50-3103. Creation of district.	1127
§ 50-3104. District organization.	1130
§ 50-3105. District powers.	1133
§ 50-3106. Change in district boundaries — Amend general	1136

plan.	
§ 50-3107. Finances.	1138
§ 50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy.	1140
§ 50-3109. Special assessments — Bonds.	1144
§ 50-3110. Revenue bonds — Election.	1149
§ 50-3111. Terms of bonds.	1151
§ 50-3112. Notice and conduct of election.	1152
§ 50-3113. Cost of administration.	1155
§ 50-3114. Annual financial statements and estimates — Annual budget — Certification.	1156
§ 50-3115. Disclosure.	1158
§ 50-3116. Dissolution of district.	1159
§ 50-3117. Exemptions and exclusions.	1161
§ 50-3118. Limitation of liability.	1162
§ 50-3119. Appeal — Exclusive remedy — Conclusiveness.	1163
§ 50-3120. Consistency with state law.	1164
§ 50-3121. Severability.	1165

## **Title 51 NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS 1166**

Chapter 1 REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)	1167
§ 51-101. Short title.	1174
§ 51-102. Definitions.	1178
§ 51-103. Applicability.	1187
§ 51-104. Authority to perform notarial act.	1188
§ 51-105. Requirements for certain notarial acts.	1192
§ 51-106. Personal appearance required.	1198
§ 51-107. Identification of individual.	1200
§ 51-108. Authority to refuse to perform notarial act.	1205
§ 51-109. Signature if individual unable to sign.	1207
§ 51-110. Notarial act in this state.	1208

§ 51-111. Notarial act in another state.	1211
§ 51-112. Notarial act under authority of federally recognized Indian tribe.	1213
§ 51-113. Notarial act under federal authority.	1215
§ 51-114. Foreign notarial act.	1218
§ 51-114A. Notarial act performed by remotely located individual.	1222
§ 51-115. Certificate of notarial act.	1226
§ 51-116. Short form certificates.	1233
§ 51-116A. Acknowledgment by entity on behalf of another entity.	1239
§ 51-117. Official stamp.	1242
§ 51-118. Stamping device.	1245
§ 51-119. [Reserved.]	1248
§ 51-120. Notification regarding performance of notarial act on electronic record — Selection of technology — Acceptance of tangible copy of electronic record.	1249
§ 51-121. Commission as notary public — Qualifications — No immunity or benefit — Reappointment.	1252
§ 51-122. Course of study.	1258
§ 51-123. Grounds to deny, revoke, suspend or condition commission of notary public.	1259
§ 51-124. Database of notaries public.	1263
§ 51-125. Prohibited acts.	1264
§ 51-126. Validity of notarial acts.	1268
§ 51-127. Rules.	1269
§ 51-128. Notary public commission in effect.	1273
§ 51-129. Savings clause.	1274
§ 51-130. Uniformity of application and construction.	1275
§ 51-131. Relation to electronic signatures in global and national commerce act.	1276
§ 51-132. Filing fees.	1277
§ 51-133. Notary fee.	1278

Chapter 2 COMMISSIONERS OF DEEDS	1279
§ 51-201 — 51-207. Appointment — Duties — Fees. [Repealed.]	1281
Title 52 NUISANCES	1282
Chapter 1 NUISANCES IN GENERAL	1283
§ 52-101. Nuisance defined.	1285
§ 52-102. Public nuisance.	1296
§ 52-103. Moral nuisances — Definitions.	1298
§ 52-104. Moral nuisances — Types.	1300
§ 52-105. Moral nuisances — Personal property — Knowledge of nuisance.	1301
§ 52-106. Moral nuisances — Building where gambling is carried on.	1302
§ 52-107. Private nuisance.	1303
§ 52-108. When not a nuisance.	1304
§ 52-109. Liability of successive owners for continuing nuisance.	1307
§ 52-110. Abatement does not preclude action.	1308
§ 52-111. Actions for nuisance.	1309
Chapter 2 PUBLIC NUISANCES	1313
§ 52-201. Not legalized by prescription.	1315
§ 52-202. Remedies.	1316
§ 52-203. Indictment or information.	1317
§ 52-204. Action by private person.	1318
§ 52-205. Abatement by public body or officer.	1320
§ 52-206. Abatement by private person.	1321
Chapter 3 PRIVATE NUISANCES	1322
§ 52-301. Remedies for private nuisances.	1324
§ 52-302. Abatement — When allowed.	1325
§ 52-303. Abatement — When notice is required.	1327
Chapter 4 MORAL NUISANCES — ACTIONS FOR INJUNCTION AND ABATEMENT	1328

§ 52-401. Cumulative remedy.	1330
§ 52-402. Who may maintain action.	1332
§ 52-403. Pleadings — Jurisdiction — Venue — Application for temporary injunction.	1334
§ 52-404. Order restraining removal of personal property from premises — Service — Punishment.	1335
§ 52-405. Notice of hearing on temporary injunction — Consolidation.	1336
§ 52-406. Right to possession of real property and personal property after hearing on the temporary injunction — Conditions for avoidance of temporary forfeiture.	1337
§ 52-407. Right to possession of real property and personal property after finding of public nuisance — Conditions for reentry and repossession.	1339
§ 52-408. Priority of action.	1340
§ 52-409. Evidence.	1341
§ 52-410. Evidence of reputation admissible.	1342
§ 52-411. Costs.	1343
§ 52-412. Content of final judgment and order.	1344
§ 52-413. Court shall punish offender for violation of injunction or order.	1346
§ 52-414. Lease void if building used for lewd purposes.	1347
§ 52-415. Civil penalty — Forfeiture — Accounting — Lien as to expenses of abatement.	1348
§ 52-416. Immunity.	1350
§ 52-417. Severability.	1351
<b>Title 53 PARTNERSHIP</b>	<b>1352</b>
Chapter 1 SPECIAL PARTNERSHIP	1353
§ 53-101 — 53-125. Special partnerships. [Repealed.]	1355
Chapter 2 UNIFORM LIMITED PARTNERSHIP ACT	1356
Part 1 General Provisions	1359
§ 53-2-101 — 53-2-118. [Repealed.]	1360
Part 2 Formation — Certificate of Limited Partnership and	1362



Other Filings	
§ 53-2-201 — 53-2-210. [Repealed.]	1363
Part 3 Limited Partners	1365
§ 53-2-301 — 53-2-306. [Repealed.]	1366
Part 4 General Partners	1367
§ 53-2-401 — 53-3-408. [Repealed.]	1368
Part 5 Contributions and Distributions	1370
§ 53-2-501 — 53-2-509. [Repealed.]	1371
Part 6 Dissociation	1373
§ 53-2-601 — 53-2-607. [Repealed.]	1374
Part 7 Transferable Interests and Rights of Transferees and Creditors	1375
§ 53-2-701 — 53-2-704. [Repealed.]	1376
Part 8 Dissolution	1377
§ 53-2-801 — 53-2-812. [Repealed.]	1378
Part 9 Foreign Limited Partnerships	1380
§ 53-2-901 — 53-2-908. [Repealed.]	1381
Part 10 Actions By Partners	1382
§ 53-2-1001 — 53-2-1005. [Repealed.]	1383
Part 11 Conversion and Merger	1384
§ 53-2-1100 — 53-2-1113. [Repealed.]	1385
Part 12 Miscellaneous Provisions	1387
§ 53-2-1201 — 53-2-1205. [Repealed.]	1388
Chapter 3 UNIFORM PARTNERSHIP ACT	1389
Part 1 General Provisions	1392
§ 53-3-101 — 53-3-107. [Repealed.]	1393
Part 2 Nature of Partnership	1398
§ 53-3-201 — 53-2-204. [Repealed.]	1399
Part 3 Relations of Partners to Persons Dealing with Partnership	1400
§ 53-3-301 — 53-3-308. [Repealed.]	1401
Part 4 Relations of Partners to Each Other and to Partnership	1402

§ 53-3-401 — 53-3-406. [Repealed.]	1403
Part 5 Transferees and Creditors of Partner	1404
§ 53-3-501 — 53-3-504. [Repealed.]	1405
Part 6 Partner's Dissociation	1406
§ 53-3-601 — 53-3-603. [Repealed.]	1407
Part 7 Partner's Dissociation When Business not Wound Up	1408
§ 53-3-701 — 53-3-705. [Repealed.]	1409
Part 8 Winding Up Partnership Business	1410
§ 53-3-801 — 53-3-807. [Repealed.]	1411
Part 9 Conversions and Mergers	1412
§ 53-3-901 — 53-3-908. [Repealed.]	1413
Part 10 Limited Liability Partnership	1415
§ 53-3-1001 — 53-3-1003A. [Repealed.]	1416
Part 11 Foreign Limited Liability Partnership	1417
§ 53-3-1101 — 53-3-1105. [Repealed.]	1418
Part 12 Miscellaneous Provisions	1419
§ 53-3-1201 — 53-3-1205. [Repealed.]	1420
Chapter 4 MINING PARTNERSHIP	1421
§ 53-401. When mining partnership exists.	1423
§ 53-402. Express agreement not necessary.	1425
§ 53-403. Sharing profits and losses.	1426
§ 53-404. Lien of partners and creditors.	1427
§ 53-405. Mine partnership property.	1428
§ 53-406. Sale of interest by partner.	1429
§ 53-407. Liability of purchaser for partners' liens for debts and advancements.	1430
§ 53-408. Liability of purchaser for liens resulting from relation of partners to each other.	1431
§ 53-409. Members cannot bind partnership.	1432
§ 53-410. Majority of shares governs.	1433
§ 53-411. Partnership contracts may be recorded.	1434
§ 53-412. Record constructive notice.	1435

Chapter 5 ASSUMED BUSINESS NAMES	1436
§ 53-501. Short title. [Repealed.]	1438
§ 53-502. Purpose. [Repealed.]	1439
§ 53-503. Definitions. [Repealed.]	1440
§ 53-504. Filing of certificate required. [Repealed.]	1441
§ 53-505. Contents of certificate. [Repealed.]	1442
§ 53-506. Effect of filing — Duration — Continuation. [Repealed.]	1443
§ 53-507. Amendment of certificate. [Repealed.]	1444
§ 53-508. Cancellation of certificate. [Repealed.]	1445
§ 53-509. Consequences of noncompliance. [Repealed.]	1446
§ 53-510. Fees. [Repealed.]	1447
§ 53-511. Dates of coverage — Transition. [Repealed.]	1448
Chapter 6 IDAHO LIMITED LIABILITY COMPANY ACT	1449
§ 53-601 — 53-672. [Repealed.]	1451
Chapter 7 UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT	1457
§ 53-701. Definitions. [Repealed.]	1459
§ 53-702. Supplementary general principles of law and equity. [Repealed.]	1460
§ 53-703. Territorial application. [Repealed.]	1461
§ 53-704. Real and personal property — Nonprofit association as legatee, devisee or beneficiary. [Repealed.]	1462
§ 53-705. Statement of authority as to real property. [Repealed.]	1463
§ 53-706. Liability in contract and tort. [Repealed.]	1464
§ 53-707. Capacity to assert and defend — Standing. [Repealed.]	1465
§ 53-708. Effect of judgment or order. [Repealed.]	1466
§ 53-709. Disposition of personal property of inactive nonprofit association. [Repealed.]	1467
§ 53-710. Appointment of agent to receive service of process. [Repealed.]	1468

§ 53-711. Claim not abated by change of members or officers. [Repealed.]	1469
§ 53-712. Venue. [Repealed.]	1470
§ 53-713. Uniformity of application and construction. [Repealed.]	1471
§ 53-714. Short title. [Repealed.]	1472
§ 53-715. Effect of chapter upon other laws. [Repealed.]	1473
§ 53-716. Transition concerning real and personal property. [Repealed.]	1474
§ 53-717. Savings clause. [Repealed.]	1475